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THE INTEREST ACTS

(ACT XXXII OF 1839

AND

ACT XXVIII OF 1855)

(with the case-law on 'Interest'.)

BY

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AND

"THE INDIAN EVIDENCE ACT."

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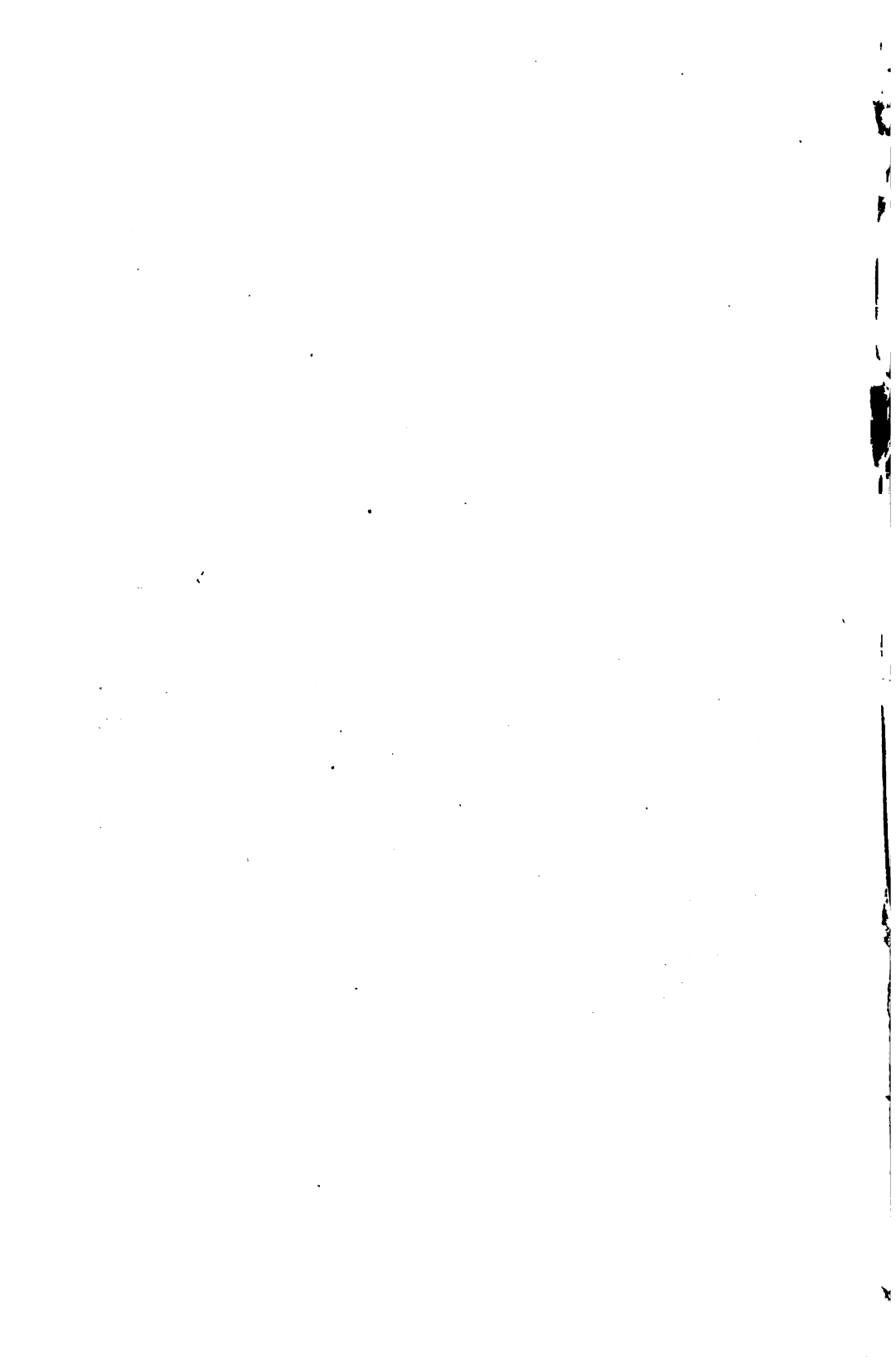
COMPILER'S NOTE.

Though the Acts relating to Interest are very few and the sections thereof handful, the cases relating thereto are very numerous and diversified and cover a very wide area. Such cases are dispersed over various headings and sub-headings in the Digests and Reports, thereby rendering the finding out of a case on a given subject by no means an easy task. I have thought it fit to collect, in the name of the Interest Acts, the whole case-law on the subject of Interest, classify, arrange and group them under appropriate heads and present them in a condensed form to the reader, so that he may pick up the cases he requires without much difficulty.

The accompanying Table of Headings, which precedes the Acts, will, I hope, serve as a guide to the study of the book.

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"MADHWA VILAS,"
Teppakulam Post,
Trichinopoly, 27-1-1908.

T. V. SANJIVA ROW.



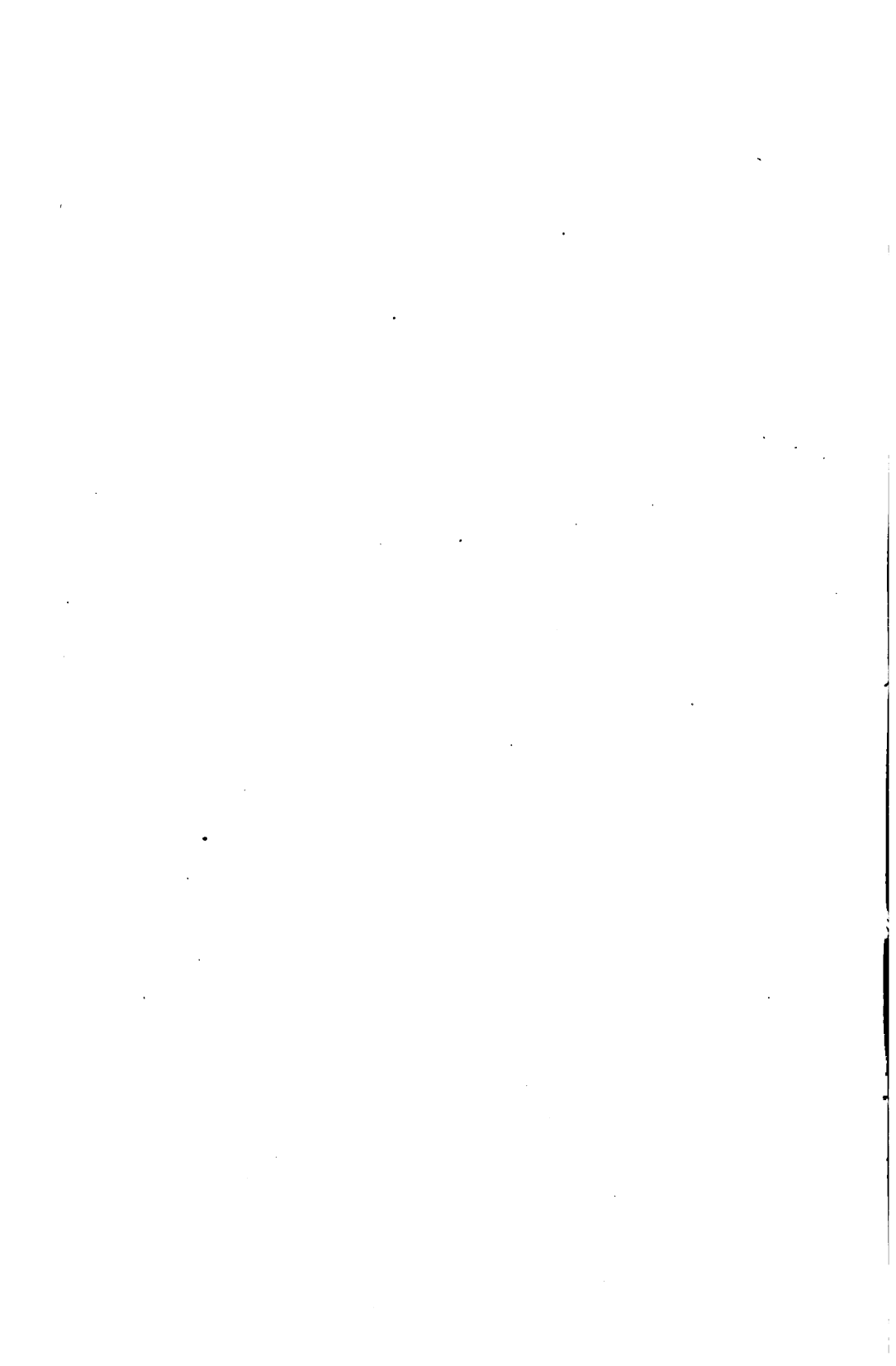
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THE INTEREST ACTS

ACT XXXII OF 1839.

PASSED ON THE 30TH DECEMBER 1839.

An Act concerning the allowance of Interest in certain cases.

1. WHEREAS it is expedient to extend to the territories under the government of the East India Company, as well within the jurisdiction of Her Majesty's Courts as elsewhere, the provisions of the Statute 3rd and 4th William IV., chapter 42, section 28, concerning the allowance of interest in certain cases :

It is therefore hereby enacted that upon all debts or sums certain¹, payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit², allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument³ at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing⁴, so as such demand shall give notice to the debtor that interest will be claimed⁵ from the date of such demand until the term of payment ; provided that interest shall be payable in all cases in which it is now payable by law.⁶

Power of Court to allow interest.

(Notes).

Nature, scope and construction of the Act.

(1) Nature of the Act—It is an enabling enactment.

The Act is only an enabling Act by which the Court is vested with a discretion to grant interest in certain cases, but does not create a right to interest in favour of creditors, which of itself, could be made the subject-matter of a suit. 1 C.W.N. 219. **A**

(2) It does not restrict power of Court to allow interest in other cases.

The Act has not the effect of restraining the power of the Court to allow interest in cases other than those mentioned in it. Marsh 239=1 Hay 500. **B**

(3) Act merely an extension of English enactment.

This Act extends the provisions of the Statute, 3 and 4 Wm. IV., c. 42, S. 28 to India. 6 M.I.A. 292. **C**

Nature, scope and construction of the Act.—(Continued).

(4) Act is retrospective in its effect.

An instrument in the nature of, though not strictly, a bond, was executed in 1833, which provided for the liquidation of the amount therein specified by instalments, but no provision was made for the allowance of interest. The condition for payment not having been performed, it was *held*, in an action brought in 1849, to recover principal and interest upon the bond, that the Act was retrospective in its operation, and authorised the allowance of interest, although it was not provided for by the bond. 6 M.I.A. 232. D

(5) Interest under the Act is given by way of damages.

(a) Interest is given under this Act by way of damages, on the ground that the debtor has wrongfully refused to pay the debt. 10 C.L.R. 561=7 C. 594. E

(b) There can be no wrongful refusal, where there is no hand to receive payment and give a complete discharge. Thus where an Insurance Company refused payment to the executors of the assignee of an insurance policy, on the ground, that they were ignorant as to the terms of the assignment, and as to whether any consideration passed or not, and that the executors should obtain the authority or concurrence of the representatives of the deceased, (who was the person assured), it was held, the Company were not liable to pay interest. (*Ibid.*) F

(6) Scope of the Act—Grant of interest before suit.

(a) Interest, before suit, cannot be decreed if the case is not covered either by the Interest Act (XXXII of 1839) or by S. 73 of the Contract Act. 4 C.W.N. 818=27 C. 814. G

(b) Unless a case satisfies the provisions of this Act, interest prior to the suit may not be awarded. D.C.R. Part II, 7. H

(c) Interest cannot be awarded as damages in an action for debt in which the requirements of the Act are absent. 19 P.L.R. 1902=104 P.R. 1901. I

(d) Where a suit for money lent is not covered by the provisions of this Act, nor by S. 73 of the Contract Act, no interest from the date of the institution of the suit may be allowed. 27 C. 814=4 C.W.N. 818. J

(e) In the absence of an agreement or usage giving a right to interest, and of a written demand giving notice that interest would be claimed, such as is contemplated in the Act, a creditor will not be entitled to interest. 19 P.L.R. 1902=104 P.R. 1901. K

(f) Suit on oral contract—Absence of demand—whether interest before suit recoverable.

See 20 M. 481=7 M.L.J. 263 noted below.

(g) Price of goods sold—No written instrument or demand in writing—whether interest prior to suit recoverable.

See 6 W.R. 288 noted below.

(7) This Act has no application where there is a contract between the parties as to rate of interest.

(a) The Act does not apply where there is an agreement between the parties regulating the amount of interest. 4 W.R. 1 (P.C.)=10 M.I.A. 229. L

Nature, scope and construction of the Act—(Continued).

(b) Where there is no contract to pay interest, the Court may grant interest if the case satisfies the requirements of Act XXXII of 1839. 37 P.R. 1867. **M**

(c) The Act does not apply to a contract to pay interest, implied from the dealings of the parties. 36 P.R. 1894. **N**

(8) Where there is a contract, Act XXVIII of 1855 applies.

(a) Where there is an agreement between the parties as to interest, Act XXVIII of 1855 applies. (*Ibid.*) See under **D**, at p. 10, *infra*. **O**

(b) Even if such contract is to be *implied* from the dealing of the parties, Act XXVIII of 1855 applies. (*Ibid.*) **P**

(9) Contingent contracts not within the scope of the Act—Wager.

(a) A wager contract (before the passing of Act No. XXI of 1848) upon the average prices, which opium would fetch at the next Government opium sale, is not within the scope of this Act, as the Act supposes a party to have been sued for breach of contract for the payment, by virtue of a written instrument, of a *sum certain*, at a certain time, and does not affect debts contingent in amount and time of coming due. 4 W.R. 8 (P.C.)=7 M.L.A. 263. **Q**

(10) What kind of contingency does the Act contemplate.

The language of the Act does not show that a contingency in the liability, not affecting the amount of debt, or the time of payment, can in any way prevent the operation of the provisions of the first part of S. 1 of the Act. 26 C. 955. **R**

(11) Power of the Court to allow compound interest under the Act.

It is doubtful whether a Court possesses the jurisdiction under the Act to allow what in effect would be compound interest. But, even if the Court has jurisdiction, there can be no doubt that it would be exercising a sound discretion in not allowing compound interest, except in cases where compound interest is expressly provided for by the agreement. 1 C.W.N. 219. **S**

(12) Power of Court to allow *post diem* interest under the Act.

(a) Where, in a registered mortgage, there was no provision for the payment of interest *post diem*, *held*, that the Court had power, under this Act, to give interest *post diem*, at a reasonable rate, as it was money payable at a certain time, and under a written instrument. 18 M. 248=4 M.L.J. 265. **T**

(b) Where a mortgage instrument is silent as to *post diem* interest, although more than six years have elapsed after the due date of the bond, such interest may be recovered under this Act, and may be made a charge on the mortgaged property. 5 M.L.J. 154. **U**

(c) The joint effect of the Interest Act and S. 88 of Transfer of Property Act is in favour of the award of interest *post diem*, as interest, till date of payment, at a reasonable rate, and as a charge upon the mortgaged property. 18 M. 248. But see 17 A. 581, *contra*. See also 18 M. 338 (note), 24 C. 699, 20 M. 371, 21 C. 274, noted under POST DIEM INTEREST. **V**

Nature, scope and construction of the Act—(Concluded).

(13) Application of the Act to debt due on a foreign judgment.

This Act does not apply to a debt due on a foreign judgment. When a judgment given in England is silent as to interest, the plaintiff cannot make the defendant liable for interest as the English Statutes as to judgments carrying interests do not apply to India. 5 C.W.N. 741 = 28 C. 641. W

(14) The rules of Hindu Law, about interest are not affected by the Act.

See 9 Bom. L.R. 439, noted under "Proviso".

(15) English cases may be referred to as guides in construction of the Act.

This Act was passed for the purpose of extending to India the provisions of the English Act (3 and 4 Will. 4, c. 42), and therefore the English decisions may be referred to as a guide in construing the Indian Act. 31 I.A. 116 (P.C.). X

(16) Suits for recovery of interest—Act XXXII of 1839.

There is no general rule to the effect that payment and acceptance of a debt *post diem* precludes recovery of interest for the delay in payment. The words "the Court before which such debts or sums may be recovered may, etc.," do not mean "are being recovered." Therefore, a creditor having recovered the principal without prejudice, may sue for the recovery of interest. 4 Bom. L.R. 205. Y

(17) No interest allowed on barred debts.

The Act does not authorise the allowance of interest where the debt on which it is claimed is irrecoverable. 27 B. 330 = 5 Bom. L.R. 198. Z

(18) Act XXXII of 1839, whether affected by S. 73 of the Contract Act.

(a) This Act cannot be held to have been superseded by the Indian Contract Act, S. 73; because, a subsequent Statute in general terms is not to be construed to repeal a previous particular statute, unless there are express words to indicate that such was the intention, or unless such an intention appears by necessary implication. 7 M.L.J. 263 = 20 M. 481. A

(b) There is no real conflict between this Act and S. 73 of the Contract, since effect can be given to both, by holding that the award of interest as compensation under S. 73 has reference to cases in which such award can be made without infringing the provisions of this Act. 7 M.L.J. 263 = 20 M. 481. B

(c) Still less can this Act be held to have been affected in any way by illus. (n) to S. 73 of the Contract Act, inasmuch as an illustration to a section has not the force of law and does not form part of the sections, which really form the enactment. 7 M.L.J. 263 = 20 M. 481. C

(19) Act XXXII of 1839 and S. 73 of the Contract Act—Difference.

This Act provides for the award of interest on debts in certain cases, and provides that, where the conditions required by the Act are satisfied, interest will be recoverable, quite irrespective of the question whether any actual loss or damage has been caused to the creditor; but, compensation under S. 73 of the Contract Act will not be recoverable by the creditor from the debtor on the ground that the payment of the money due to him has been withheld by the debtor, unless he can show that actual loss or damage has been caused to him. 26 C. 955. D

*1.—“debts or sums certain.”***(1) No interest on unliquidated damages.**

Interest should not be awarded on unliquidated damages. 7 Bom. H.C. A.C. 89. **E**

(2) Mesne profits not a sum certain—Right to interest.

See 9 B.H.C. 7 under “INTEREST ON MESNE PROFITS,” *infra*. See also 3 C. 654.

*2.—“the Court may....if it shall think fit.”***(1) Act merely vests the Court with a discretion.**

The Act is an enabling Act which vests the Court with a discretion ; it does not create a right to interest in favor of creditors, which, of itself, could be made the subject matter of a suit. 1 C.W.N. 219. **F**

(2) Discretion vested in Court by Act XXXII of 1839, whether liable to review.

It is a question whether the discretion vested in the Court by this Act, in allowing or refusing interest, in cases within the Act, is liable to review. 4 W.R. 8 (P.C.)=7 M.I.A. 263. **G**

*3.—“if such debts....be payable by virtue of some written instrument.”***(1) Price of goods sold—Interest prior to suit—whether recoverable under the Act.**

In a suit to recover the price of goods sold, interest could not be awarded prior to the suit, where the debt was not payable by virtue of a written instrument, at a certain time, and where no demand in writing was made for payment. 6 W.R. 288. **H**

(2) Suit on an oral contract—Absence of demand in writing—whether interest before suit recoverable.

See 20 M. 481=7 M.L.J. 263, noted below.

(3) Administrator-General's certificate admitting a debt—whether a “written instrument.”

A certificate of the Administrator-General admitting a debt to be due is not a “written instrument” such as is contemplated by the Act, because the amount mentioned therein is not payable by *virtue of the certificate*, which merely purports to certify the registration of the amount of the admitted debt for the purpose of convenience in administering the estate. 25 C. 54. **I**

(4) Decree of a settlement officer—whether a written instrument.

It is doubtful whether a decree or an order of a Settlement officer, under S. 40, Act XVII of 1876, is a written instrument within the meaning of the Interest Act. 1 O.C. 94. **J**

*4.—“when demand of payment shall have been made in writing.”***(1) Demand must be in writing.**

(a) Interest, prior to the institution of the suit, cannot be given under this Act, unless a demand of payment has been made in writing. 7 Bom. L.R. 798. **K**

(b) Interest up to the date of the suit cannot be awarded on sums payable, not under a written instrument, the payment of which has been illegally delayed, unless there is a written demand of payment. 1 M.H.C. 369. **L**

4.—“when demand of payment shall have been made in writing.”
(Concluded).

(2) Suit on an oral contract—Interest.

(a) In a suit on an oral contract, where no agreement for interest or usage for payment of interest was alleged, *held* that interest was not allowable, there being no written demand or notice so as to bring the case under this Act. 20 M. 481=7 M.L.J. 268. **M**

(b) Interest prior to suit on price of goods sold, whether recoverable. See 6 W.R. 288, **H**, at p. 5, *supra*. **N**

(3) What is sufficient demand of payment.

(a) A letter of the plaintiff demanding interest on an outstanding debt retrospectively, up to the date of the demand, was held to have made it sufficiently clear, by implication, that it was the intention of the plaintiff to claim interest, prospectively, up to the date of payment, and to have complied with the requirement of the Act. 23 M. 41. **O**

(b) Demand for retrospective interest may imply demand for prospective interest.

See 181 P.L.R. 1901 and 23 M. 41, **Y**, at p. 7, *infra*.

(c) Heads of bills notifying that interest will be charged may constitute sufficient notice. 7 A.W.N. 287 (noted below). **P**

(d) Demand for principal may imply demand for interest. See 23 M. 41, noted **O**, *supra*. **Q**

(4) Promissory note payable on demand—Demand for payment.

Where there was no proof of a demand of payment, the Court refused to award interest on the balance due on a promissory note payable on demand. 1 B.L.R.O.C. 41. **R**

(5) Suit for contribution—Whether demand necessary.

See 17 W.R. 179, *infra*.

(6) Suit by one co-sharer who paid revenue on behalf of others—No demand necessary.

Interest may be allowed on payment of revenue made by one co-sharer on behalf of others, notwithstanding, that no demand of interest was made before suit. Marsh 239=1 Hay 500. **S**

5.—“such demand shall give notice to debtor that interest will be claimed.”

(1) Necessity for notice.

Under this Act, a creditor has the option of notifying to his debtor the date from which interest will be claimed, and failure to give such notice deprives the creditor of the interest to which he might, with due diligence, have established a claim. 181 P.L.R. 1901. **T**

(2) What is a sufficient notice—Heads of bills.

At the head of every bill of the seller of goods, the following was printed: “Interest will be charged at 12 *per cent.*, *per annum*, on bills not paid on presentation.” *Held* that the bill was a sufficient notice under the Act. 7 A.W.N. 287. **U**

5.—“*such demand shall give notice to debtor that interest will be claimed.*”
(*Concluded*).

(3) **Demand for retrospective interest may imply demand for prospective interest also.**

A letter demanding interest, from which it was made clear, by implication, that it was the creditor's intention to claim interest up to the date of payment, was sufficient notice under the Act, so as to entitle the creditor to interest prospectively from the date of the letter, though the express demand was for interest retrospectively. 181 P.L.R. 1901
See also 28 M. 41. Y

(4) **Demand for principal may imply demand for interest.**

When a contractor is, for no fault of his own, kept out of his money, the principal sum, for a long time after it is due, it would be reasonable that the law should admit of interest being recoverable, by way of damages, for the period for which he is kept waiting for the principal sum due, after demand made, whether that demand is coupled with a claim to interest or not. 23 M. 41. W

(5) **Previous litigation on the same subject matter—Sufficient notice.**

The existence of a previous litigation, upon the same subject matter, is sufficient notice in order to entitle the plaintiff to charge interest. 2 Hay 123. X

6.—“*Provided that interest shall be payable in all cases... now payable at law.*”

(1) **Rules of Hindu Law not affected by the Act.**

Neither the Interest Act, nor the Contract Act, affects the rule of Hindu Law, that, in the case of a debt wrongfully withheld, after demand of payment has been made, interest becomes payable by way of damages. That law was in force when the Interest Act was passed, and, under this proviso, it has continued to be in force. The Indian Contract Act has not interfered with the law, as that rule of Hindu Law is consistent with the provisions of that Act. 9 Bom. L.R. 439. Y

(2) **Act does not apply where there is an agreement between the parties—Principal and agent.**

By an agreement between the principal and his agent, 10 *per cent.*, was to be allowed as commission. The Sudder Court, under Act XXXII of 1839, allowed 12 *per cent.*, *per annum*, from the date of the suit, on the amount found due to the agents. Such rate of interest was disallowed on appeal as the Act would not apply to an agreement between the parties regulating the amount of interest. 4 W.R. 1 (P.C.)=10 M.I.A. 229. Z

(3) **Act does not apply to contribution suits.**

(a) Act XXXII of 1839 does not apply to contribution suits. So, a written demand need not be served before interest can be charged on a claim for contribution. 19 W.R. 98=10 B.L.R. 352. A

(b) In a suit for contribution, interest may be allowed although no demand has been made. 17 W.R. 179. B

(4) **Payment by one co-sharer on behalf of others—Demand—Interest.**

Interest may be allowed on payments of revenue made by one co-sharer on behalf of others, notwithstanding no demand of interest may have been made before suit. Marsh 299=1 Hay 500. C

6.—“*Provided that interest shall be payable in all cases....now payable at law.*”—(Concluded).

(5) Usage saved from the operation of the Act.

Where an usage was established, by which it appeared, that interest was paid upon a wager contract, upon the average price which opium would fetch at the next Government sales, *held that*, according to such usage, interest ought to have been allowed upon the principal sum recovered in an action; and the judgment of the Supreme Court at Calcutta refusing interest was reversed on that ground. 4 W.R. 8 (P.C.)—7 M.I.A. 263. D

ACT XXVIII OF 1855.

RECEIVED THE G.-G.'S ASSENT ON THE 19TH SEPTEMBER 1855.

An Act for the repeal of the Usury Laws.

Preamble. WHEREAS it is expedient to repeal the laws now in force relating to usury; It is enacted as follows:—

1. [*Repealed by Act XIV of 1870.*]

(Notes).

Nature and scope of the Act.

(1) Act merely lays down rules to determine rate of interest.

Act XXVIII of 1855 prescribes rules for determining the rate at which interest, where recoverable, shall be calculated and does not deal with the right to recover interest. 36 P.R. 1894. E

(2) This Act abolishes all usury laws; and binds parties to their contracts.

(a) The Act abolishes all usury laws, and any rate of interest which the parties may stipulate is now legal. 6 B.H.C. (A.C.), 7. F

(b) Ever since the Act was passed it has been the uniform practice of the Courts to treat all restrictions on the rate of interest, as removed. 20 W.R. 317=12 B.L.R. 451. G

(c) The Act is a conclusive proof that the intention of the Legislature is that the parties shall be left to make, and be compelled to stand by, their own bargains. 2 M.H.C. 451. H

(3) But Court's power to relieve against penalty, not affected by the Act.

(a) The effect of the above Act was not to take away the equitable jurisdiction of the Court to relieve against penalties. 17 B. 106. See also 2 C.W.N. 338, 10 B.H.C. 382 and 19 W.R. 271=11 B.L.R. 135. I

(b) Courts in this country should take great care that they do not enforce oppressive transactions to which the parties have not given a really free consent. But a contract, which is deliberately consented to, cannot be set aside merely because a very heavy risk is provided for by a very high rate of interest. 20 W.R. 317=12 B.L.R. 451.

(c) An agreement to pay an increased rate of interest on default, may be enforced at law; but equity will not recognise it. The object of the agreement is to secure payment at the stipulated time, but the Court of equity does not regard time as of the essence of the contract. 6 B.H.C. (A.C.), 7. K

Nature and scope of the Act.—(Continued).

- (d) The provisions of this Act do not override the general law of the country. The Court is not compelled to enforce every agreement for interest. The power of the Court to adjudicate upon the right to recover interest claimed, or on the applicability of Ss. 73 and 74 of the Contract Act, to a contract to repay money lent with interest, is not affected by the Act. 99 P.R. 1894. **L**

(4) Court's equity jurisdiction not affected by the Act.

The equity jurisdiction of Indian Courts is not taken away by the Act. 4 Bom. H.C. (A.C.), 202. **M**

(5) Act does not supersede rules of Hindu Law.

- (a) This Act does not affect or supersede the rules of Hindu Law as to interest. 7 B.H.C. (O.C.), 19. **N**
- (b) The Act was not intended to interfere with the rules of Hindu Law with regard to money dealing. 3 B.L.R. (O.C.), 80=12 W.R. (O.C.), 9. **O**
- (c) *Act XXVIII of 1855* has not altered the rule of Hindu Law, *vis.*, that no greater amount of interest than the principal sum can be recovered at any one time. 3 B.H.C. (A.C.), 23. **P**
- (d) Neither this Act, nor S. 10 of the Contract Act, prevents the application of the Hindu rule of *damdupat* where the parties are Hindus. 7 C.L.R. 204=5 C. 867. **Q**

(6) Damdupat, rule of, applicable to Presidency towns and not to the Mofussil.

- (a) It is well settled that, in the province of Calcutta, outside the Presidency town, no rule limiting the amount of interest to a sum equal to the principal prevails. It is no doubt an anomaly that there should be, on a point like this, one rule in Calcutta, and another outside it. But a comparison of the history of contracts in the Presidency towns and in the mofussil shows that the difference does exist. 14 C. 781 (787). **R**
- (b) The Statute 21, Geo. III, C. 70, sec. 17, required the Supreme Court of Fort William to determine all matters of contract and dealing between party and party, in the case of Gentoos, by the laws and usages of the Gentoos. There was never any such legislative provision in the rest of the Province. The result was that the Supreme Court was, and the High Court is, bound to give effect to the Hindu Law of contracts, of which the rule of Damdupat forms a part. 14 C. 781 (788). **T**
- (c) In the Presidency town of Calcutta, the Supreme Court was, and the High Court is, bound, in its original jurisdiction, to administer the Hindu Law as to Damdupat in matters of contract among Hindus. 1 C. 92=24 W.R. 106. **T**
- (d) In the mofussil of Bengal the rule of law prohibiting interest was not the Hindu Law of Damdupat, but S. 6 of Reg. XV of 1793. This was applicable not merely to Hindus, but to all persons contracting in the mofussil. 9 C. 825 (827)=12 C.L.R. 400. **U**
- (e) From the earliest times up to 1874 no claim for a reduction of interest has ever been allowed on the ground of Hindu Law or usage, but, on the contrary, this contention, whenever raised, has always been repudiated, and in several cases the Courts granted interest beyond the principal. 9 C. 825 (828)=12 C.L.R. 400. **Y**
- (f) The Hindu Law of Damdupat as such is not binding as Law upon the Hindus in the mofussil. 6 M.H.C. 400. **W**

Nature and scope of the Act.--(Concluded).

- (g) Reg. XV of 1793 was superseded by Act XXVIII of 1855. Hence interest beyond the principal is demandable among Hindus in the mofussil. 9 C. 825 (827)=12 C.L.R. 400. **X**
- (h) S. 4 of Reg. XXXIV of 1803 provided that no interest more than the principal ought to be allowed. This regulation, though repealed in 1855, the practice of limiting interest to the amount of principal yet continued. We are unable to say that, as positive law, the limitation as to interest still exists. 6 M.H.C. 400. **Y**
- (i) In the mofussil, the Court is bound, under S. 2 of Act XXVIII of 1855, to award the full interest that is due under the terms of the bond. 9 C. 871=12 C.L.R. 590.
- (j) In the mofussil, there is nothing to prevent the Court from awarding the amount of interest due according to the contract of the parties, provided there is no equitable ground on which the Court should interfere. 1 C. 92=24 W.R. 106. **A**

(7) Act does not affect contracts entered into before the passing of the Act.

Held, that the Act was passed on the 19th September, 1855, and did not come into force until the 1st January, 1856, and did not therefore affect contracts entered into previously to the passing of the Act. 3 B.H.C. (A.C.), 11. **B**

(8) Implied contracts to pay interest come within the scope of the Act.

A contract to pay interest implied from the dealing of the parties is governed by Act XXVIII of 1855. Interest Act (XXXII of 1839) has no application to such a case. 96 P.R. 1894. **C**

2. In any suit in which interest is recoverable, the amount shall be adjudged or decreed by the Court at the rate to be decreed by (if any) agreed upon by the parties¹; and if no Courts. rate shall have been agreed upon, at such rate as the Court shall deem reasonable.

(Notes).

1.—“In a suit in which interest is recoverable.....at the rate agreed upon by the parties.”

(1) Act does not deal with the right to recover interest.

This Act merely prescribes rules for determining the rate, at which interest, where recoverable, shall be calculated. It does not deal with the right to recover interest. 36 P.R. 1894. **D**

(2) Contract to govern the transactions of parties.

- (a) It is the intention of the legislature that the parties shall be left to make and be compelled to stand by their own bargains. 2 M.H.C. 451. **E**
- (b) This section is applicable to suits on contracts, and interest at the agreed rate is recoverable irrespective of the creed of the contracting parties. 6 N.W.P. 358. **F**

(3) Court's power to grant relief against penalty, not affected by the section.

- (a) This section does not affect the question of penalty or no penalty, and the Court has the power to decide upon that point and to grant relief against penalty. 19 W.R. 271=11 B.L.R. 135. **G**

1.—“In a suit in which interest is recoverable.....at the rate agreed upon by the parties.”—(Continued).

(b) It is open to the Court to decide, notwithstanding this section, whether a stipulation as to the enhanced rate was agreed upon between the parties as interest properly so called or as penalty. 3 C.W.N. 175 = 26 C. 300. **H**

(c) If the terms of the section were strictly applied, it would be impossible to say to what extravagant and extortionate extent, the most usurious claim under the name of ‘interest’ might not be carried. In a country like India where there is much borrowing by the ignorant lower classes, who as much require to be protected against themselves as against money-lenders, a too literal application of the above provision could only be productive of oppression and injustice of the most grievous kind. 3 A. 260 (F.B.) **I**

(d) Though the Legislature has provided that any rate of interest which the parties may have agreed upon shall be awarded, yet this enactment in no way prevents a Civil Court in India, which administers law and equity, from examining into the character of the agreements made between persons, (mortgagor and mortgagee, trustee and *cestui que trust*) between whom, relations exist, which will enable one party to take advantage over the other, and from declining to enforce such agreements, unless they are shown to be fair and reasonable. 4 Bom. H.C. (A.C.), 202. **J**

(4) What is Penalty, and how is relief granted against it.

See 20 W.R. 257, noted under “INTEREST AMOUNTING TO PENALTY” also noted under “INTEREST ON NEGOTIABLE INSTRUMENTS.”

(5) Mere exorbitant rate of interest, no ground for relief.

The mere fact, that the rate of interest on the amount due under a promissory note is exorbitant, is not sufficient to disentitle the plaintiff to the interest stipulated for, in the absence of any circumstances, such as want of sufficient capacity in the defendant to understand the nature of the transaction, or the existence of any fiduciary relation between the parties. 29 C. 823.

(6) A contract to pay 5 per cent. compound interest per mensem was allowed.

By S. 2 of the Act, it is enacted that, where interest is recoverable, Courts should decree interest at the rate agreed upon, unless, upon any equitable grounds, the defendant claims to object.

In the absence of such equitable grounds, a contract to repay the amount lent, viz., Rs. 300, with compound interest at the rate of 5 per cent. per mensem, with monthly rests, was enforced. 7 C.W.N. 876. **L**

(7) Contract to pay increased rate of interest on default from date of bond amounts to penalty.

See cases noted under “INTEREST AMOUNTING TO PENALTY.”

(8) Contract to pay increased rate of interest only from date of default does not amount to penalty.

See cases under “INTEREST AMOUNTING TO PENALTY.”

1.—“In a suit in which interest is recoverable.....at the rate agreed upon by the parties.”—(Concluded).

(9) Where there is only one rate of interest, payable on default, from date of demand.

(a) Where a bond does not provide for two rates of interest, one lower and the other higher, the latter being payable under certain circumstances, but provides for only one rate of interest, payable on breach of the contract to pay at the stipulated time, S. 2 of Act XXVIII of 1855 is applicable to such a bond, notwithstanding the interest stipulated payable from the date of the demand. 13 C. 200. **M**

(b) Thus where the stipulation in a bond ran thus :—“I cannot pay Rs. 1,000 now; so, I will pay it within two months and 15 days. If I do not pay it within that period, I will pay the amount with interest, from the date of the bond, at the rate of 2 annas per rupee per month,” held that it did not amount to a penalty under S. 74 of the Contract Act, and that such interest was recoverable. (*Ibid.*) **N**

(c) Where, under an agreement to re-pay a loan on a certain date, the debtor incurred no obligation to pay interest at all on the money which he owed, and his liability to pay interest only arose in the event of default, held, that such a stipulation was not governed by the Contract Act of 1872 or the Contract Act Amendment Act, 1899. Interest at the stipulated rate could be recovered under Act XXVIII of 1855, S. 2. 25 M. 343=11 M.L.J. 421. **O**

(10) How far this section affects the rule of Damdupat.

See cases noted under “NATURE AND SCOPE OF THE ACT,” *supra*.

(11) S. 209, C.P.C.—Court’s discretion.

By S. 2, Act XXVIII of 1855, the Court must allow the contract rate of interest up to the date of the decree. S. 209 of the Code of Civil Procedure does not expressly refer to suits in which interest has been contracted for. 3 M. 125. **P**

(12) Negotiable Instruments Act, S. 80—Right to contract rate of interest.

S. 80 of the Negotiable Instruments Act does not deprive a plaintiff of his contractual right to interest, which shall be enforced under the provisions of S. 2 of this Act. 11 C.W.N. 105 (P.C.)=4 A.L.J. 29=9 Bom. L.R. 1=1 M.L.T. 427=17 M.L.J. 35=5 C.L.J. 7. **Q**

3. Whenever a Court shall direct that a judgment or decree

Rate of interest upon a judgment or decree.

shall bear interest, or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the Court shall think fit.

(Note).

See cases under “INTEREST ON DECRETAL AMOUNT” and “INTEREST ON COSTS.”

Contracts for usufruct of property in lieu of interest.

4. A mortgage or other contract for the loan of money, by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties.

(Note).

See cases under "INTEREST ON MORTGAGE DEEDS."

5. Whenever, under the Regulations of the Bengal Code, a deposit may be made of the principal sum and interest due upon any mortgage or conditional sale of land hereafter to be entered into, the amount of interest to be deposited shall be at the rate stipulated in the contract, or, if no rate has been stipulated and interest be payable under the terms of the contract, at the rate of twelve per centum per annum. Provided that, in the latter case, the amount deposited shall be subject to the decision of the Court as to the rate at which interest shall be calculated.

Amount of interest to be deposited in certain cases of conditional sales under Bengal Regulations.

Proviso.

6. In any case in which an adjustment of accounts may become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may be entered into after the passing of this Act, interest shall be calculated at the rate stipulated therein; or, if no rate of interest shall have been stipulated and interest be payable under the terms of the contract, at such rate as the Court shall deem reasonable.

Rate of interest on future adjustments of accounts.

(Notes).

See cases noted under "INTEREST AT THE CONTRACT RATE" and "INTEREST ON MORTGAGE DEEDS."

A.—THE HINDU LAW RULE OF DAMDUPAT.

(1) Damdupat explained.

The rule of Hindu Law of Damdupat is simply this,—that no greater arrears of interest can be recovered at any one time than what will amount to the principal sum; but if the principal remain outstanding, and the interest be paid in smaller sums than the amount of the principal money, there is no limit to the amount of interest which may be thus received from time to time. 1 B.H.C. (A.C.), 47. **R**

(2) Damdupat applies only where parties are Hindus.

- (a) This rule only applies when the parties are Hindus. 3 B. 131, 18 B. 227, and 21 B. 38. **S**
- (b) The Hindu rule of *damdupat* can only operate when the defendant is a Hindu. 3 B. 131. See also 21 B. 38. **T**
- (c) The rule of damdupat only applies to case where the debtor is a Hindu. 18 B. 227. **U**

(3) Damdupat, not in force in Central Provinces.

The Hindu Law of *Damdapat* is not in force in the Central Provinces. 1 C.P.L.R. 57. **Y**

(4) Damdupat, its operation.

The rule of Damdupat does not divest rights that have accrued; it merely limits accruing rights. 8 Bom. L.R. 82=30 B. 452=1 M.L.T. 49. **W**

A.—THE HINDU LAW RULE OF DAMDUPAT.—(Continued).

(5) Conversion of interest into principal not prohibited by the rule.

(a) The Hindu Law does not forbid the conversion by subsequent agreement of interest in arrears into capital, nor is any such prohibition involved in the rule of damdupat as it has been formulated. 24 B. 305. X

(b) In the case of a bond purporting to be executed in adjustment of a past debt, the principal for the purposes of the rule of damdupat is the amount of the bond, and not the balance of the unpaid principal actually advanced to the defendant on an earlier bond. 24 B. 305. Y

(6) Damdupat on an instalment bond.

In the case of a suit on an instalment bond, where the instalments are satisfied in part, the principal claim along with interest, the arrears of interest claimable at any one time must, under the *damdupat* rule, be limited to the principal balance due and not to the original balance of the bond. 20 B. 611. Z

(7) Son's liability to pay father's debt—Damdupat.

The liability of the sons to discharge the father's debts is not limited, with regard to interest, by the provision of the Hindu rule of damdupat, which is inapplicable to them; of course, where the amount of the father's debt must be determined with reference to the law of the land. 2 C.W.N. 203. A

(8) Damdupat, extent of the rule—It does not extend after decree.

(a) The rule of *damdupat* applies only so long as the contractual relation of the debtor and creditor exists, but not when the contractual relation has come to an end by reason of a decree. 10 C.W.N. 884=33 C. 1269. B

(b) There is no authority for limiting the amount recoverable in execution of a decree by the Hindu rule of damdupat. 1 B. 73. C

(9) Damdupat—Discretionary power of Court under S. 209, C.P.C.

The discretionary powers conferred on the Courts by S. 209 of the Code of Civil Procedure may be exercised without reference to the law of damdupat. 22 B. 86. D

(10) Damdupat not affected by Limitation Act.

The rule of damdupat is not affected by the Acts of limitation. 9 B. 233. E

(11) Damdupat and rules of limitation distinguished.

The law of damdupat is not inconsistent either with Art. 118 or Art. 132 of the Limitation Act of 1871. These articles relate to the time within which a suit must be brought; whereas the rule of damdupat prescribes that an amount of interest greater than the principal cannot be recovered. 3 B. 212. F

(12) Damdupat, not affected by Contract Act.

The rule of Damdupat is not affected by the provisions of the Contract Act. S. 37 of the Act, which says, that it is the duty of every promisor to perform his promise, does not conflict with this rule, since this rule is covered by the words "unless such performance is excused under the provisions of any other law", which occur in the section. 26 M. 662 (670). G

A.—THE HINDU LAW RULE OF DAMDUPAT.—(Continued).**(13) Damdupat not affected by Act XXVIII of 1855.**

- (a) Notwithstanding this Act, the Hindu rule of damdupat, by which, the amount of interest recoverable at any one time cannot exceed the principal, is still in force. 9 B.H.C. 83. See 2 W.R.S.C.C. Rep. 1 (*contra*). **H**
- (b) The rule of damdupat has not been abrogated by this Act or by the Limitation Act. 3 B. 312. See also 7 B.H.C. (O.C.), 19; 3 B.L.R. (O.C.), 30 = 12 W.R. (O.C.), 9; 3 B.H.C. (A.C.), 23; 7 C.L.R. 204 = 5 C. 867, &c., noted under Act XXVIII of 1855. **I**

(14) Damdupat, rule of, in Presidency towns and Mofussil.

See 14 C. 781 (787), noted under Act XXVIII of 1855.

(15) In the Presidency Towns Court was bound by 21 Geo. III, C. 70, to administer Hindu Law of Contracts to Hindus.

See 14 C. 781 (788), noted under Act XXVIII of 1855.

(16) In the mofussil the Hindu rule of Damdupat was never administered as such.

See 6 M.H.C. 400 and 9 C. 285, noted under Act XXVIII of 1855.

(17) In the mofussil interest was limited by Reg. XV of 1793, not by Hindu Law.

See 9 C. 825 (828), noted under Act XXVIII of 1855.

(18) Reg. XV of 1893 was repealed by Act XXVIII of 1855—So interest more than principal is demandable in mofussil.

See 9 C. 825, noted under Act XXVIII of 1855.

(19) Damdupat abrogated in respect of mortgages governed by T.P. Act.

Under Ss. 86 and 88 of the Transfer of Property Act, the mortgagee is entitled to a decree for interest at the rate contracted for. This rule must be taken to supersede the rule of Damdupat, on the principle, that an anterior general rule must give way to a later special rule introduced by Statute. 26 M. 662 (670). **J**

(20) Damdupat, applicability to mortgage transactions.

The applicability of the law of Damdupat to mortgage transactions may thus be summed up :—

- (1) The damdupat rule applies in all cases as between Hindu debtors and creditors both in respect of simple as well as mortgage debts.
- (2) It does not, however, apply where the mortgagee has been placed in possession and is accountable for profits received by him as against interest due.
- (3) But where these profits, are, by the terms of the bond, received for only a portion of the interest on the mortgage debt, the general rule of damdupat will govern such cases. 24 B. 114 (119). **K**

(21) Damdupat—Mortgage—Account of rents and profits.

- (a) In mortgage transactions, where there is no account on either side and no charge for rents and profits, the rule of damdupat will be applicable. 5 B.H.C. (A.C.), 196. **L**
- (b) The rule of damdupat is applicable in a case of a mortgage where no account of rents and profits has to be taken. 3 B. 312. **M**
- (c) The rule of damdupat applies to mortgages where no account of the rents and profits are to be taken. 15 B. 84. **N**

A.—THE HINDU LAW RULE OF DAMDUPAT.—(*Concluded*).

(d) In mortgage transactions, if after the rents and profits received by the mortgagee were appropriated to the interest, there was a balance still due exceeding the principal, the decree on that part of the claim must be limited to double the principal amount. 15 B. 625 (*overruled* by 20 B. 721). O

(e) The ruling of the Full Bench in 20 B. 721 cannot be confined to cases in which, at the date of the suit, an account between the mortgagor and mortgagee was actually being kept. The fact that an account may be taken between the parties, of interest on the one side, and rents and profits on the other, is sufficient to exclude the law of *damdupat*. 22 B. 86. See also 24 B. 114. P

(22) *Damdupat*—Mortgage—Grain interest.

Where, in a mortgage, the advance was made in cash, but the interest was to be paid in grain, *held* that the rule of *damdupat* was applicable. 22 B. 761. Q

B.—INTEREST AT CONTRACT RATE.

(1) *Contract rate of interest generally to be enforced*.

(a) A Court has no power to interfere with the contract of the parties in respect of interest. So long as they deal fairly and openly with each other, they are at liberty to contract for interest on any terms they please, and the Court is bound to see that the contract is enforced. 6 W.R. 254. R

(b) Where the parties are *sui juris* and there is no question of fraud or oppression or improper dealing or undue influence, they are competent to make, and must stand by, their own bargain. 10 C.W.N. 640. S

(c) Unless there is proof of fraud, mistake or incompetency, the Court will not be justified in refusing to award the interest stipulated for in a Registered bond. Old S.C. 104 (Oudh). T

(d) The Court is bound to decree the interest agreed upon, unless there are grounds shown for considering that the agreement was unfair, oppressive, or made under such circumstances as would justify the Court in modifying its terms. 1 C.P.L.R. 57. U

(e) A borrower executed a bond and agreed to pay interest at Rs. 24 per cent., *per annum*, until the whole debt, principal and interest might be paid off. He also agreed that, if the whole was not paid within the time mentioned, the bond should be enforced as a registered deed.

Held, that the rate of interest was not in the discretion of the Court, and that the lower Court was right in holding that the defendant was bound to pay interest at the stipulated rate. 15 W.R. 396. Y

(f) Under the present Law, the Court is bound to enforce an agreement between the parties to a contract as respects the amount of interest to be paid upon a bond. 2 W.R.S.C. Reference 1. W

(2) *Same principle applicable also to mortgage-deeds*.

A mortgagee is entitled to recover the agreed rate of interest without any deduction. 9 C. 309. X

(3) *How far is such rate to be allowed—Decisions conflicting—Some cases hold that it must be allowed up to date of suit*.

(a) The Courts have a discretion under S. 209 of the Civ. Pro. Code, in the matter of allowing interest after the date of the suit, 17 C.P.L.R. 38. Y

B.—INTEREST AT CONTRACT RATE.—(*Continued*).

- (b) In a suit on a bond stipulating for compound interest, *held* that the lower Court acted properly, in allowing interest at 6 per cent., from the date of the commencement of the suit, and that it should be charged upon the aggregate amount of principal and compound interest, which accrued due after the date of the bond. 25 W.R. 323. But see 12 M. 485. **Z**

(4) Even though such rate is specially mentioned as payable up to date of realization.

Having regard to S. 209 of the Code of Civil Procedure, the rate of interest after plaint is in the discretion of the Court, although a fixed rate of interest is mentioned in the bond sued upon as payable up to the date of realization. 12 C. 569 (F.B.). But see 12 Mad. 485. **A**

(5) Some other cases hold that such rate is to be allowed up to date of decree.

- (a) A creditor is entitled to interest at the agreed rate up to the date of the decree, and not merely up to the date of the plaint. 12 M. 485. **B**
- (b) When a defendant admits a contract, a Civil Court is bound to award interest, at the stipulated rate, up to the date of the decree. 23 W.R. 309. **C**
- (c) A Court is justified in giving interest at the rate stipulated for in the bond down to the date of the decree. But after the date of the decree, the contract ceases and becomes merged in the decree, and the plaintiff recovers such interest as, according to the course and practice of the Court, is allowed on debts, for which the creditor has the security of its decree. 11 W.R. 455 = 11 B.L.R. 138 (Note). **D**
- (d) A Civil Court has power to exercise its own discretion in making an order in respect of the rate of interest from any time after the date of the decree. 23 W.R. 309. **E**

(6) Some other cases hold that such rate is to be allowed up to date of realization.

- (a) Interest must be allowed at the stipulated rate up to the date of realization. 30 C. 953. **F**
- (b) There is nothing in law to prevent interest at the rate stipulated for on a bond being decreed up to the date of actual payment. 5 C.W.N. 658. **G**
- (c) Ordinarily, when a rate is fixed for interest, it is to be paid until the debt is repaid, unless there are clear grounds for deciding the rate to hold good only up to the time appointed for the repayment of the principal. 92 P.R. 1905 = 50 P.L.R. 1906. **H**

(7) Some cases have held that the stipulated rate is to be allowed up to date fixed for payment, by the contract.

See cases noted under "POST DIEM INTEREST."

(8) Interest in case of mortgage decrees—Stipulated rate, how far to be allowed.

See cases under "INTEREST ON MORTGAGE-DEEDS."

(9) Where contract is silent about interest, award of interest is in the discretion of the Court.

There is no rule of law, by which in the absence of a contract to pay interest, an award of interest is made compulsory. It is within the discretion of the Court either to give or withhold interest. 19 W.R. 98 = 10 B.L.R. 352. **I**

B.—INTEREST AT CONTRACT RATE.—(Continued).

(10) Implied contract for interest is construed as contract for a reasonable rate of interest.

(a) When there is an implied agreement between the parties to a contract for sale and delivery of goods, that interest would be charged if goods sold were not paid for on delivery, reasonable interest ought to be allowed. 2 A.L.J. 3 = 27 A. 361. **J**

(b) Where a bond or agreement fails to specify the rate of interest, it is no doubt within the discretion of the Court to determine that rate; but the rate so determined must be fair and reasonable. L.B.R. (1872-92), 294. **K**

(11) Generally simple interest is allowed, unless there is contract to the contrary.

Ordinarily, simple interest is allowed unless there is an agreement to the contrary; such agreement may be express or implied. 7 Bom. L.R. 772. **L**

(12) Excessive rate of interest no ground for refusing to award it.

In the case of an agreement to pay interest, a Court will not be justified in refusing to award the interest agreed upon solely because it is an excessive one. 9 A.W.N. 169. See also 7 C.W.N. 876, 31 C. 223, 96 P.R. 1901, &c., noted under "INTEREST—UNCONSCIONABLE RATE." **M**

(13) Where there is excessive rate, it is granted up to date fixed for payment, and then the ordinary rate is allowed.

(a) Where a bond is for a specified period and has a stipulation for a higher rate of interest than that of the Court, the Court should award the stipulated rate up to the date fixed for payment and the ordinary rate subsequent to that date. Old S. C. 38; see also cases noted under "INTEREST, *POST DIEM*." **N**

(b) In a suit on a bond, by which the debtor agreed to pay interest at 12 per cent. per annum, up to the date fixed for payment, and failed to do so for a long time, the High Court declined to interfere with the decision of the lower Court awarding the amount of principal and interest at the rate specified in the bond up to the stipulated date of payment, and at one half of that rate up to the date of the decree, and costs in proportion, with interest thereon from that date to the date of realization at 4 per cent. per annum. 18 W.R. 322. **O**

(c) Interest accruing after the due date of a bond is in the nature of damages, and it is, therefore, in the discretion of the Court to allow what rate it thinks proper. 25 W.R. 318. **P**

(13-a) Sometimes interest may be awarded as damages.

The Court may, in a proper case, award interest by way of damages though, in the plaint, the word 'interest' only is used. 5 C.W.N. 356. See also cases noted under "INTEREST, *POST DIEM*" and under "INTEREST ON MESNE PROFITS." **Q**

(14) Compound interest, by itself, is legal and enforceable.

See cases under "INTEREST AMOUNTING TO PENALTY."

(15) Compound interest at a higher rate, treated as penalty.

Stipulation for the payment of compound interest at a higher rate is a penalty, which should not be allowed. 29 C. 43. See also cases noted under "INTEREST AMOUNTING TO PENALTY." **R**

B.—INTEREST AT CONTRACT RATE.—(Concluded).**(16) Suit for accounts—Interest.**

In a suit relating to balance of accounts interest will not be decreed, in the absence of an agreement to pay interest, on the mere probabilities of the case. 16 W.R. 148. **S**

(17) Suit for money due under an oral contract—Interest Act.

A plaintiff, to whom a sum of money was payable under an oral contract, was held not to be entitled to interest, as no agreement or usage giving right to interest was alleged, and no written demand and notice had been given under the Interest Act. 20 M. 481. See cases noted under ACT XXXII OF 1839. **T**

(18) Amount of debt fixed—Frequent demand—No inference of contract to pay interest.

No implied contract for the payment of interest can be drawn from the mere fact that the debt is a fixed amount and has been frequently demanded. 51 P.R. 1366. **U**

(19) From what date is interest to commence.

The genuineness of a bond and the defendant's liability under it being clearly established, a Court is bound to allow interest, on the sum due to the plaintiff, from the date on which the defendant declined payment. W.R. (1864), 291. **V**

C.—INTEREST ACCORDING TO MERCANTILE USAGE AND INTEREST ON NEGOTIABLE INSTRUMENTS.**(1) Interest may be granted in accordance with mercantile usage.**

Where there is a mercantile usage to pay interest on debts, even when there is no express agreement to pay interest, such usage may be given effect to, and interest awarded. 5 M.I.A. 136. **W**

(2) Usage in Bombay.

An usage among merchants to award interest on all book debts, in Bombay, has been found to exist. 5 M.I.A. 136. **X**

(3) Usage in Calcutta—Opium wager contracts.

In an action on a contract known as *Tajee munde chitties*, opium wager contracts, (before the passing of the Act XXI of 1848, which prohibited such gambling contracts), the plaintiff claimed interest on the sum recovered. *Held*, that, as there was no stipulation as to interest in the contract, or any satisfactory evidence of mercantile usage at Calcutta to import interest into the contract, the interest claimed could not be allowed. 9 M.I.A. 256. **Y**

(4) Usage of bankers at Moorshadabad.

- Interest is claimable on hundies drawn out at 111 days' sight by the usage of native bankers at Moorshadabad. 4 W.R. 85. **Z**

(5) Where there is no such usage, interest cannot be imported into the contract.

Neither by English nor the Hindu Law, unless there be a mercantile usage, can interest be imported into a contract, which contains no stipulation to that effect. 9 M.I.A. 256. **A**

C.—INTEREST ACCORDING TO MERCANTILE USAGE AND INTEREST ON NEGOTIABLE INSTRUMENTS.

—(Continued).

(6) Negotiable Instruments Act, S. 4—Agreement to pay a certain sum with interest on demand, whether promissory note.

- (a) An agreement to pay a certain sum with interest on demand is a promissory note according to the definition thereof as laid down in S. 4 of the Negotiable Instruments Act. 4 Bom. L.R. 912. **B**
- (b) So, a document in the following terms—"be it known that I have borrowed Rs. 986-15-0 from you in order to pay a decree which was due to you by D; so I write this in your favour to say that I will pay the amount to you in six months with interest at 9 per cent. per annum," was held to be a promissory note within the meaning of this section. 9 A. 351. **C**
- (c) So, also, an instrument to the following effect—"On the 14th December, 1861, we, A and C, bind ourselves to pay, with interest to you, B and D, Rs. 566-10-0, being the balance of dealings held with your firm, and the amount received this day from you in cash on account of stamp," was held to be in the nature of a pro-note. 1 M.H.C. 152. **D**

(7) Pro-note may also contain provision for payment of interest on default.

Likewise, an instrument for payment of a certain sum of money on a given date, and containing a stipulation for payment of interest at a certain rate on default, was held to be a pro-note, notwithstanding the provision for payment of interest on default. 3 A. 260 (F.B.) **E**

(8) Interest specified in Negotiable Instruments—S. 79, Negotiable Instruments Act.

S. 79 of the Act says—"When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs." **F**

(9) Interest specified in the Instrument—Negotiable Instruments Act, S. 79—English Law.

According to the English Law, where a rate of interest is stipulated in a bill of exchange, the holder might recover interest at that rate, from the time when the bill became due, as well as for the time during which it was running. 3 A. 600 (607). **G**

(10) S. 74 of the Contract Act, whether applicable to negotiable instruments.

S. 74 of the Contract Act does not apply to negotiable instruments. These are governed solely by the provisions of S. 79 of the Negotiable Instruments Act. U.B.R. (1892-96), 300. **H**

(11) How long specified interest is to be allowed.

Where the maker of a pro-note had entered into the contract knowingly, interest must be allowed at the rate specified in the pro-note, until some date after the institution of the suit. But there is no obligation on the Court to grant the specified rate of interest until the date of realisation or up to the date of decree. U.B.R. (1892-96), 591. **I**

C.—INTEREST ACCORDING TO MERCANTILE USAGE AND INTEREST ON NEGOTIABLE INSTRUMENTS.

—(Continued).

(12) Interest on negotiable instrument when no rate is specified—S. 80, Negotiable Instruments Act.

S. 80 of the Negotiable Instruments Act says—"When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, S. 532, be calculated at the rate of 6 *per centum per annum*, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs." J

(13) S. 80, Negotiable Instruments Act, application of.

S. 80 of the Negotiable Instruments Act applies, not only to cases where interest is mentioned but no rate of interest is fixed, but also to cases in which no mention is made of interest at all. The mercantile usage and the English law, by which the Courts were guided in awarding interest before the Act, were not abrogated by the section. The section only limits the rate of interest to six *per cent. per annum*. 23 M. 18. K

(14) S. 80, Negotiable Instruments Act, scope and nature of—Collateral agreement as to interest.

(a) Hundies, upon which a suit was brought, were silent as to interest. But it was proved that, in accordance with the custom of the district, the parties had entered into a collateral agreement, embodied in written documents, that the hundies should bear interest at 80 per cent. per annum. *Held*, that this section, being an enabling section, was no bar to the recovery of interest at the above rate. 11 C.W.N. 105 (P.C.)=5 C.L.J. 7=9 Bom. L.R. 1=17 M.L.J. 95=4 A.L.J. 29=1 M.L.J. 427 = 29 A. 33. L

(b) This section does not purport to deprive those dealing in Negotiable Instruments of the freedom of contract possessed by the other contracting parties. It purports to confer a right to interest, but does not take away such a right otherwise existing. (*Ibid.*) M

(c) But where the plaintiff has to rely upon this section as the ground of his claim to interest, the terms of the section must be followed. (*Ibid.*) N

(d) S. 80 of the Negotiable Instruments Act does not deprive a plaintiff of his contractual right to interest, which shall be enforced under the provisions of S. 2 of Act XXVIII of 1855. (*Ibid.*) O

(e) In the absence of a special contract contained in a hundi, the rate of interest allowable to the plaintiff in a suit thereon is that mentioned in this section, *viz.*, 6 *per cent. per annum*. 6 P.L.R. 1905. P

(f) Under S. 80 of the Act silence of the instrument as to interest is equivalent to an agreement to pay interest at 6 *per cent. per annum*. 17 M.L.J. 296 (297). Q

15) Admissibility of oral evidence, when instrument is silent as to interest.

Where a pro-note makes no mention of interest at all, oral evidence cannot, under S. 92 of the Evidence Act, be adduced to prove a contemporaneous agreement to pay interest at a certain rate. But in such a case 6 *per cent.* interest should be awarded under this section. 17 M.L.J. 296. R

C.—INTEREST ACCORDING TO MERCANTILE USAGE AND INTEREST ON NEGOTIABLE INSTRUMENTS.

—(Continued).

(16) Admissibility of oral evidence to remove ambiguity.

Where a note of hand contained a promise to pay interest at 5%, without specifying whether it was *per month* or *per annum*, held that oral evidence of the previous transactions of the parties and of custom is admissible to explain the ambiguity. W.R. 1864, 379. S

(17) Interest granted in accordance with usage.

See 5 M.L.A. 136, etc., noted above.

(18) Interest on pro-note in a suit under Ch. XXXIX, C.P.C.

In a suit on a promissory note under chapter XXXIX of the Civil Procedure Code, a plaintiff cannot claim interest or adduce evidence as to interest, unless such interest is specified in the note itself. 7 C.W.N. 412. T

(19) Claim for higher rate of interest than that provided for in the bond.

A claim for interest at 8 *per cent.*, on the amount of a promissory note, founded upon a bare promise of the debtor to pay 8 *per cent.*, or upon the fact that the debtor has in his account debited himself with 8 *per cent.*, in lieu of 5 *per cent.*, provided for in the bond, could not be maintained in law for want of consideration. 11 M.L.A. 129. U

(20) Instalment bond—Interest on default.

Where a bond provides for the payment of the amount due on specified instalments and for interest from the date of the bond on failure to pay the instalments, such a provision is governed either by S. 74 or S. 73 of the Contract Act. 99 P.R. 1894. Y

(21) Instalment bond—Increased rate of interest on default, whether penalty.

(a) An agreement in a promissory note payable by instalments with interest at a certain rate, to pay an increased rate of interest in case of default in the payment of instalment, is a penalty and must be relieved by awarding a lower rate. 6 B.H.C. (A.C.), 7. W

(b) When a promissory note, payable by instalments, stipulated that interest should run at one *per cent. per mensem*, on default of payment of any one instalment, the Court, holding that the increased rate of interest was a penalty, reduced the rate of interest to 9 *per cent. per annum*. 6 B.H.C. (A.C.), 8. X

(22) Penalty, what is—Relief, how granted.

(a) Where a creditor desires punctual payment, and seeks to ensure it by stipulating that, if the money is not paid on a certain date, a certain larger sum shall become due and that he shall be entitled to claim that sum afterwards, such stipulation is viewed as a penalty. If default in punctual payment occurs, a Court of equity will relieve the debtor from payment of the whole penalty, if it be shown that the loss which the delay in payment caused to the creditor will be compensated for by a less sum. 20 W.R. 257. Y

(b) Where a Court considers a stipulation for interest as a penalty, it is the duty of the Court to consider, what amount of money will properly measure the damages, consequent on the default which the penalty is intended to prevent. 20 W.R. 223. Z

C.—INTEREST ACCORDING TO MERCANTILE USAGE AND INTEREST ON NEGOTIABLE INSTRUMENTS.

—(Continued).

- (c) An agreement to pay an increased rate of interest on default, though enforceable at law, would not be recognised in equity. The object of such agreement, being to secure payment of the debt at the stipulated time, cannot be given effect to in equity, as equity does not consider time as the essence of the contract. 6 B.H.C. (A.C.), 7. A

(23) Interest specified in pro-note—Whether S. 74 of the Contract Act applies.

See U.B.R. (1892-96), 300, noted above; see also cases noted under “INTEREST, WHEN AMOUNTS TO PENALTY.”

(24) Interest, when in the nature of penalty.

- (a) A contract to pay interest at 10 *per cent. per annum*, if the principal sum of Rs. 400 were not paid on the due date of a pro-note was held not to be in the nature of penalty, as this was not similar to the class of cases in which a certain sum is agreed to be paid on a breach of contract. 2 C. 202. B

- (b) When a promissory note provided a high rate of interest from the date of default of payment, interest up to the date of payment having been already deducted when the advance was made, *held* that the defendant was perfectly well aware of the document that he had made, and that he must be held to it. 4 C. 137=2 C.L.R. 493. C

- (c) A contract to pay interest at 10 *per cent. per mensem*, from the due date the principal sum is not paid on the due date of a promissory note, is not in the nature of penalty notwithstanding that this interest is, in the note, called a defaulting interest. 2 B. 202. D

- (d) A promissory note contained the stipulation that, if the money was not paid at the end of two months, interest at the same rate as was paid for the two months shall continue to be paid. *Held* that the stipulation was not one for an increased interest on default in payment, and therefore could not be treated as a penalty. 7 B.H.C. 19. E

(25) Deduction of interest in the shape of discount from the amount advanced on a bill of exchange.

It is not illegal to deduct interest in the shape of discount from the amount advanced on a bill of exchange, if such deduction be made with the full knowledge and consent of the borrower, and under such circumstances as would not lead to the inference that unfair advantage was taken of the position of the borrower. 2 C.L.R. 349. F

(26) Rules by a banking firm, how far binds borrower.

The publication of rules by a banking firm, registered under the provisions of Act X of 1866, regarding the payment of interest on loans, will not bind a borrower who has no knowledge of the rules. 2 C.L.R. 349. G

(27) Acknowledgment of debt—Higher rate of interest.

An acknowledgment, being intended only for the purpose of evading the law of limitation, cannot give to the creditor a right, in the absence of special stipulation to the contrary, to claim interest at a higher rate than that which the debt had borne down to the date of acknowledgment. 14 M. 258=18 I.A. 37. H

C.—INTEREST ACCORDING TO MERCANTILE USAGE AND INTEREST ON NEGOTIABLE INSTRUMENTS.

—(Concluded).

(28) Eventual payment—when it takes effect—interest.

Where cheques or bills are eventually honoured, the payment then made relates back to the time when the document was delivered. In such a case, interest on the amount paid runs from the date of the delivery of the document. 2 N.L.R. 179. I

(29) Alteration of rate of interest—material alteration.

The alteration of a rate of interest in one of the clauses of a pro-note, though it may be a penal clause, is a material alteration and invalidates the document. 6 B. 371. J

(30) Payment of interest in advance to holder—Liability of acceptor.

The acceptance of interest in advance by the holder of a *hundi* from the drawer does operate as giving time to the drawer. The liability of an accommodation acceptor of a *hundi*, in such a case, depends on whether he knew of, and assented to, the advance interest being taken. 6 C. 241=6 C.L.R. 591 (P.C.) K

D.—INTEREST ON MORTGAGE-DEEDS.

(1) Where a mortgage deed does not provide for interest, interest as such cannot be awarded.

(a) Interest as interest cannot be allowed on money lent on a hypothecation bond, or on a deed of conditional sale, unless it appears from the bond or deed that it was the intention of the parties that interest should be payable, and then only for the period during which it was intended that interest should be payable. 10 A. 85 (90). L

(b) Interest on a mortgage-bond is not recoverable if the bond does not provide for interest. 11 M.L.J. 186. M

(c) Where a deed of mortgage is silent as to interest, payment of the bare principal within the year of grace is sufficient to bar foreclosure. W.R. (1861), 157. N

(2) But it may be awarded as damages.

But even where no such provision is made, interest may be awarded by way of damages. 10 A. 85. O

(3) Where there is a provision for interest such stipulated rate is to be allowed.

(a) The general rule is that a plaintiff is entitled to interest in accordance with the terms of the mortgage bond (up to date of decree) and that a Civil Court has no discretion vested in it to refuse to award such interest. 20 B. 744 (745). P

(b) Where there is a provision for interest in the mortgage-deed, the mortgagee is entitled to recover the agreed rate of interest without any deduction. 9 C. 309 (314). Q

(4) Court's discretion under S. 209, C.P.C., excluded by S. 86, Transfer of Property Act.

The terms of S. 86 of the Transfer of Property Act exclude the discretion conferred on the Court by S. 209, Civ. Pro. Code, as regards interest, in cases coming under the Transfer of Property Act. 20 C. 860. R

D.—INTEREST ON MORTGAGE-DEEDS.—(Continued).

- (5) Stipulated rate how far to be allowed—Decisions not uniform— one case holds that it must be up to date of institution of suit.**

Where, in a mortgage-deed executed in 1879, interest on the money lent was contracted to be payable, "even if a suit should be instituted" at the rate fixed for the period for which the money was lent, *held*, that interest must be decreed at this rate, according to the contract, down to the institution of the suit. 15 A. 339 (P.C.)=20 I.A. 116. **S**

- (6) Some hold such rate to be allowed up to date of decree.**

(a) The rule recognised by Ss. 86 and 88 of the Transfer of Property Act is that interest in accordance with the mortgage bond is to be allowed up to the date of the decree. 20 B. 741. **T**

(b) Interest at the rate contracted for in the mortgage-deed must be allowed up to the date of the decree. This is in accordance with S. 2 of Act XXVIII of 1855. 3 M. 125. **U**

(c) In a suit for redemption, the mortgagee is to be allowed interest at the mortgage rate from the date of the bond up to the date of the decree. 14 B. 113. **V**

(d) Where interest at a certain rate is stipulated for, the plaintiff is entitled to such rate up to the date of the decree. 12 M. 485. **W**

(e) Even if it could be assumed that Ss. 86 and 88, Transfer of Property Act, have not deprived the Courts of the discretion conferred on them by S. 209, C. P. C., yet, that discretion being a judicial discretion to be exercised on proper judicial grounds, it must be taken that so far as mortgage suits are concerned, the Legislature has indicated a guide to such discretion in Ss. 86 and 88 of the Transfer of Property Act, than which the Courts cannot have a better guide. 2 C.W.N. 633=25 I.A. 179=26 C. 39 (P.C.). **X**

- (7) Some others hold such rate to be allowed until date fixed by decree for payment.**

(a) The mortgagee is entitled to interest at the contract rate up to the date fixed by the decree for payment. 31 C. 138 (141). **Y**

(b) S. 86 of the Transfer of Property Act binds the Court to give a decree at the rate of interest provided for by the mortgage, if it be the rate to which no legal objection can be taken. Interest must be so computed down to the day fixed by the Court, within six months from declaring in Court the amount due. 20 C. 360. **Z**

(c) In passing a decree for sale in a mortgage suit, the contract rate of interest must be allowed only for the period allowed for payment by the mortgagor; and, subsequent to that period, the mortgagee is entitled to interest only at six per cent. per annum. 21 M. 364. **A**

(d) There is no authority making it compulsory on the Court to allow the contract rate of interest after the date fixed for redemption by the decree in a mortgage suit. 29 M. 170=16 M.L.J. 133. **B**

(e) After the date fixed by the decree for payment, the mortgagee is entitled only to a reasonable rate of interest; and six per cent., was fixed as a reasonable rate of interest in this case. 31 C. 138 (141). **C**

(f) A mortgagee is entitled to interest at the stipulated rate, there being no valid objection to the rate, up to the date fixed by the decree for payment. 20 C. 37. **D**

D.—INTEREST ON MORTGAGE-DEEDS—(*Continued*).

- (g) Rule 605 (Belchamber's Rules and Orders) is not *ultra vires* and governs a decree for interest after the time allowed for redemption, which is a decree for payment of money. Therefore interest will be allowed at the rate stipulated for by the mortgage for the six months allowed for redemption, and at the Court rate from that date up to the date of payment. 6 C.W.N. 769. **E**
- (8) Some other cases hold that such rate is to be allowed until date of realization.
- (a) A mortgage decree should ordinarily provide for the payment of interest at the contract rate up to the date of realization, and not merely up to the date fixed for payment by the decree. 11 M.L.J. 7. **F**
- (b) Ss. 86 and 88 of the Transfer of Property Act indicate clearly enough, that the ordinary decree in a suit for the enforcement of a simple mortgage should direct accounts to be taken, allowing the rate of interest provided by the mortgage, up to the date of realization. 26 C. 39 (P.C.) = 25 I.A. 179 = 2 C.W.N. 633 (P.C.) **G**
- (9) Power of Court to allow interest in mortgage suits after date fixed by decree for payment.
- (a) The Transfer of Property Act does not, in mortgage suits, exclude the allowance of interest subsequent to the date of decree and the date fixed by the decree for payment, until the debt is realised. 24 C. 766 = 1 C.W.N. 550. See also 31 C. 138, 26 C. 39 (P.C.), 23 A. 181 (P.C.), 29 M. 170. (19 A. 174, *contra*.) **H**
- (b) S. 88 of the Transfer of Property Act does not limit the interest at the contract rate to the date fixed by the decree for payment of the principal and interest, nor does it preclude interest from extending over the time down to the realization of the entire amount due. 3 C.L.J. 85 (P.C.) = 1 M.L.T. 65 = 28 A. 223 = 16 M.L.J. 160. **I**
- (c) The object of fixing a day for payment by the mortgagor is for the purpose of assigning a definite time at which the mortgagor's right of redemption is to cease, and the mortgagee's right to foreclose or to sell is to attach, and not for the purpose of staying the running of interest. 21 A. 361. **J**
- (d) S. 86 is framed with reference not to the running of interest but to the determination of the time of redemption or sale alternatively, and, therefore, has not the effect of limiting interest to the period fixed by the decree for the re-payment of the mortgage-amount. 23 A. 181 = 28 I.A. 35 (P.C.) **K**
- (e) Ss. 86 and 88 of the Transfer of Property Act do not exclude the awarding of interest after the date fixed by the decree for payment. The Court may, under S. 209 of the Civ. Pro. Code, order interest at such rate as it deems reasonable from the date fixed by the decree for payment up to date of realization. 2 O.C. 37, followed in 3 O.C. 129. **L**
- (f) The power exercised by Courts to grant interest up to realisation under the Civ. Pro. Code appears, in cases of decrees for sale of mortgaged property, to be excluded by Ss. 86 and 88 of the Transfer of Property Act. 19 A. 174, overruled by 21 A. 361 and also by 23 A. 181 (P.C.). **M**
- (g) Ss. 86 and 88, Transfer of Property Act, only confines the power to grant interest up to the date fixed by the decree for payment. But in a decree for sale, the Court can award interest after the date fixed by

D.—INTEREST ON MORTGAGE-DEEDS—(*Continued*).

the decree for payment, by an exercise of a special power, *dehors*, S. 88 of the Transfer of Property Act, and inherent in the Court for the due administration of justice. 17 C.P.L.R. 164. **N**

(10) Interest due on a mortgage, whether a charge on mortgaged property.

(a) Interest due under a mortgage is a charge upon the land, in the absence of a contract to the contrary. 121 P.R. 1894. **O**

(b) The mortgagee has a right, in the absence of any contract to the contrary, to treat the interest due on a mortgage as a charge on the property, and, under Art. 132 of the Limitation Act of 1877, arrears of interest for 12 years prior to the date of suit may be recovered. 57 P.R. 1888. But see 147 P.R. 1890 (F.B.) **P**

(c) Where interest is made a charge on the mortgaged property and is due for more than 12 years, the mortgagor has no right to avail himself of the provisions of Art. 132 of the Limitation Act (1877) so as to obtain a redemption on payment of the principal with 12 years' interest. 147 P.R. 1890 (F.B.), (*overruling* 57 P.R. 1888). **Q**

(11) Interest for period extended under S. 87, Transfer of Property Act, whether a charge on the property.

Where a Court gives, under S. 87 of the Transfer of Property Act, an extension of the time for the payment of the mortgage debt, on condition that interest not necessarily at the mortgage rate is paid on the decretal amount, such additional interest cannot form part of the mortgage-debt but can only be recovered personally. 12 C.P.L.R. 78. **R**

(12) Rent—whether charged on the property.

A registered rent deed executed by the mortgagor, to whom the land was leased for one year by a usufructuary mortgagee, provided for a charge on the land for arrears of rent. The mortgagor holding over and not having paid any rent, *held* that only one year's rent was recoverable, that rent was not recoverable as interest due on the mortgage, and that the clause as to the charge was not a term of the lease as lease. 11 M.L.J. 186. **S**

(13) Separate suit for interest and principal on mortgage deed, whether maintainable.

(a) Where the principal and interest are due under one mortgage, only one suit can be brought under S. 43 of the Code of Civil Procedure for the recovery of both. This cannot be overridden by an agreement between the parties that a separate suit for each of them can be brought. 28 P.R. 1907. (But see 16 P.R. 1866). **T**

(b) A person borrowing a certain amount of money by mortgaging his house promised to pay the interest fixed on the amount every month. It was held, that the mortgagee can sue for the arrears of interest alone without suing for the principal sum. 16 P.R. 1866. (But see 28 P.R. 1907). **U**

(14) No suit for interest after foreclosure, as foreclosure extinguishes the whole debt.

(a) Under Regulation XVI of 1806 (Punjab) the effect of a foreclosure of a mortgage was to discharge the whole mortgage debt including both the principal and interest. Therefore no separate suit for interest will lie. 103 P.R. 1893. **V**

D.—INTEREST ON MORTGAGE-DEEDS—(*Continued*).

- (b) It is the duty of the mortgagee, when he forecloses the mortgage, to give notice to a person having the right of pre-emption of the amount due in respect of such mortgage. If he fails to give such notice he can recover only the amount found due by the Court decreeing foreclosure without any additional interest. 2 O.C. 108. **W**

(15) **Enjoyment of usufruct prima facie treated as in satisfaction of interest.**

- (a) Without some special agreement or some special custom the mortgagee should not retain both the usufruct and the interest, but the usufruct should be treated as in satisfaction of the interest on the mortgage. 5 O.C. 155. **X**

- (b) In usufructuary mortgages, unless there is a stipulation to the contrary, the mortgagee takes the profit instead of interest and no account can be demanded of him. Old S.C. 66 (Oudh). **Y**

- (c) Where, in an usufructuary mortgage, a lease was executed under which the mortgagor became the tenant of the mortgagee and paid rent in lieu of interest, that mortgagee takes his chance of the rents and profits being greater or less than the interest which might have been reserved by the bond and the mortgagor is entitled to redeem on repayment of the mortgage money. 7 C.W.N. 97 (P.G.). **Z**

(16) **Mortgagee taking possession—Account for profits—Mortgagor's liability to interest.**

Where, by the terms of a mortgage, it appeared that the parties intended that, if the mortgagors failed to pay interest as agreed, the mortgagee might further secure himself by taking possession of the share mortgaged, and that if he should do so he should account for the profits which should be set off against the interest agreed to be paid, *held* that the mortgagor's obligation to pay interest at the stipulated rate had not ceased on the mortgagee obtaining possession. 5 O.C. 286. **A**

(17) **Usufructuary mortgagee out of possession—Interest in lieu of profits.**

- (a) Where a usufructuary mortgagee does not take possession of the mortgaged property which he would have otherwise obtained he cannot subsequently claim interest in lieu of those profits. 9 O.C. 144. **B**
- (b) Where a deed of usufructuary mortgage provided, that the mortgagee should enjoy the profits accruing from the property in lieu of interest for a certain period, but did not provide for the payment of any interest during the period in which the mortgagor did not place him in possession, *held* that the mortgagee who had remained in possession of the property for the stipulated period would not be entitled to interest during the period he was kept out of possession. 7 N.W.P. 57. **C**

(18) **Mortgagee's right to interest on money spent on improving mortgaged property.**

Even where a Court finds that the mortgagee is entitled to the money spent in permanent improvement in the mortgaged property, the Court must not allow interest on such account. 67 P.R. 1893. **D**

(19) **Mortgage—Stipulation for compound interest.**

- (a) The interest on a debt due under a mortgage bond was payable annually; on default, compound interest at the same rate was payable; if all the interest were not paid within three years the mortgagee was entitled to possession of the mortgaged property. *Held* that the mortgagor was liable to pay compound interest between the date of the mortgage and the date on which the mortgagee obtained possession. 4 O.C. 347. **E**

D.—INTEREST ON MORTGAGE-DEEDS—(Continued).

- (b) A mortgage was for 3 years, and interest was at Rs. 1-3-0 per cent. per mensem payable yearly. Any default in payment of interest made the principal payable with compound interest. The mortgage was a peculiar one, being of the nature of usufructuary mortgage, in that the mortgagee enjoyed the profits in lieu of interest, and also partook of the nature of an ordinary mortgage as the mortgagor stipulated to pay any deficiency of interest.
- Held*, in a suit for redemption, that the mortgagors were liable to pay compound interest on the deficiency. 28 A. 225 = 10 C.W.N. 266 (P.C.) = 1 M.L.T. 66 = 3 C.L.J. 356. **F**
- (c) A stipulation in a mortgage-bond for payment of compound interest if interest was not paid at the specified times, and increased rate of interest if the mortgage-amount was not paid on the day fixed, was construed as providing for compound interest both before and after the period fixed for payment of the mortgage-money; but the increased rate of interest was held to take effect only from the date fixed for payment. 11 M.L.J. 183. **G**
- (20) **Mortgage deed—Stipulation of compound interest not in the nature of penalty.**
- (a) A stipulation in a mortgage bond, for the payment of compound interest, in default of payment of interest by half yearly instalments, is not in the nature of penalty, and is valid, when there is no question of fraud, oppression, improper dealing, exorbitant amount, dealing with an ignorant person, or the like consideration. 20 C. 360. **H**
- (b) Where it was provided by a mortgage-deed that interest at 9 per cent. should be paid half yearly and that compound interest at the same rate should be payable, if interest was not so paid, *held* that the mortgagee was entitled, on default, to compound interest at the stipulated rate up to the date fixed by decree for payment. 2 O.C. 37. **I**
- (21) **Receipt of produce of mortgage-land, whether receipt of interest—Limitation.**
- A mortgage cannot be kept alive by the receipt of the produce of the mortgaged land, as such receipt cannot be called receipt of interest within the meaning of S. 21, Act IX of 1871. 74 P.R. 1874. **J**
- (22) **Mortgage—Interest at “two per cent.”—Construction.**
- In a mortgage the words “two per cent.” in the clause relating to payment of interest on redemption mean *prima facie* two per cent. *per mensem*. 28 A. 734 (P.C.) **K**
- (23) **“Interest on a mortgage”—Meaning—S. 86, Transfer of Property Act.**
- The “interest on a mortgage” is not necessarily only the interest which the parties stipulated should be paid, but would also include interest which, under the law, is payable. 21 C. 274. **L**
- (24) **Interest up to the date of realization—Means up to date of confirmation of sale.**
- Where a mortgage-decree provides for payment of interest up to the date of realization, the mortgagor is entitled to interest up to the date of confirmation of the sale, and not simply up to the date of sale. 33 C. 846. **M**
- (25) **Construction of decree—where decree is capable of two interpretations.**
- (a) Where a decree is capable of two constructions, either that it awards interest only up to the date fixed for payment or that it awards interest up

D.—INTEREST ON MORTGAGE-DEEDS—(Continued).

to realization, the decree should be construed so as to make it in conformity with Ss. 86 and 88 of the Transfer of Property Act and, therefore, interest should be allowed up to the date of realization. 21 A. 361. See also 23 A. 181 (P.C.) **N**

- (b) Such construction is based on the principle that all ambiguous documents should be construed rather to make them accord with law than to make them conflict with it. 23 A. 181 (190) (P.C.) **O**

(26) Foreclosure-decree—Future interest—Construction of decree.

A foreclosure-decree which provides for payment of "future interest . . till payment", would be construed in accordance with law, if the expression "till payment" be construed as meaning "till the date for payment, and not as till actual payment." 1 N.L.R. 43. **P**

(27) Absence of express words in the decree granting interest after the date fixed for payment.

Where there are no express words in the decree for sale of the mortgaged property, granting interest after the date fixed by the decree for payment, the Court must be taken as having limited itself to the apparent power given by Ss. 86 and 88 of the Transfer of Property Act. 17 C.P.L.R. 164. **Q**

(28) Where puisne mortgagee seeks to redeem—He should pay same amount as mortgagee.

Where a mortgagor agreed to pay, in default of payment of the mortgage amount on the due date, interest at 12 per cent., on the principal and interest taken together, the latter being calculated with annual rests, *held* that the second mortgagee wishing to redeem the mortgaged property from the first mortgagee, who had purchased the property in execution of his decree against the mortgagor should pay compound interest from the date of the mortgagor's default. 21 C. 366 (P.C.) = 21 I.A. 1. **R**

(29) Where puisne mortgagee was no party to the suit.

A puisne mortgagee, who was not a party to the suit brought by the first mortgagee against the mortgagor for enforcing the mortgage, may redeem the mortgage upon payment of the sum due on the mortgage up to the date for re-payment fixed in the original mortgage-decree together with interest at the Court rate up to the date of actual payment. 11 C.W.N. 403. **S**

(30) Pre-emptor liable to pay same amount as mortgagor.

- (a) When a mortgage by conditional sale becomes absolute, a cause of action accrues to a person having a right of pre-emption upon which he can bring a suit. When a mortgage deed stipulated for the payment of interest annually and, in case of default, to pay compound interest, *held* that inasmuch as the mortgagor, had he redeemed, would have been bound to pay compound interest, the pre-emptor was also bound to pay compound interest up to the date of foreclosure. 3 A. 610. **T**

- (b) A person having the right of pre-emption, in respect of a land comprised in a mortgage, can get the land only on payment of the entire amount due—principal and interest—on such mortgage, at the time of payment. 121 P.R. 1894. **U**

(31) Mortgagee not giving notice to pre-emptor—Effect on pre-emptor's liability to pay interest.

See 20 C. 103, noted *supra*.

D.—INTEREST ON MORTGAGE-DEEDS—(Continued).

- (32) Hindu son not made party to mortgage suit—Liability to pay father's debts with interest.**

A Hindu son cannot set up his right against a mortgage made by his father on the sole ground that he was not made a party to the suit by the mortgagee, and he is also liable for interest and costs payable under the decree. 4 O.C. 93. **Y**

- (33) Purdanashin lady executing a mortgage for interest due under previous mortgages—Guardian of minor.**

Where a widow who was a purdanashin lady, acting as a guardian of her minor son, executed a mortgage-deed for interest due under three previous mortgages executed by her husband, and also promised by means of a written but unregistered instrument to pay a higher rate of interest than that provided for in the mortgage-deed, and where it also appeared that she did this without knowing that the mortgage was for interest and without herself settling the account, *held* that the mortgage could not stand and that the unregistered written instrument could not fetter the equity of redemption. 3 C.W.N. 573 (P.C.)=26 I.A. 97=26 C. 707. **W**

- (34) Sale or mortgage—Re-payment of the amount with interest.**

In a sale of property, where the purchaser executes an agreement to re-transfer it, on the vendor repaying the amount of the purchase-money with interest within a specified time, *held* that the stipulation as to the payment of interest is not conclusive to show that the transaction is not an absolute sale but a mortgage. 6 C.W.N. 192. **X**

- (35) Interest generally not allowed for the day on which money was advanced and that on which it was repaid.**

In the absence of any proof as to any local usage, amongst the bankers of the particular locality, a mortgagee is not entitled to interest for the day on which the money was advanced, as also for the day on which the money was repaid. 8 C.W.N. 216. **Y**

- (36) Mode of taking accounts—Interest.**

There are two methods of taking accounts between mortgagor and mortgagee.

First method :—They may be permitted to run from the date of the loan to the date of settlement, interest being allowed to the one party on the whole sum lent, and to the other, on the sum realized, over and above the interest to which the mortgagee is entitled from the date of realization.

Second method :—The amount collected by the mortgagee in possession may be carried first to interest and, after paying that, to the liquidation of the principal, the account being closed at the end of each year, and there being allowed from year to year only the reduced interest on the reduced principal. 4 P.L.R. 1900=3 P.R. 1900. **Z**

- (37) Waiver inferred from non-adherence to a contract of payment of interest.**

A waiver of the payment of interest can be inferred by a non-adherence to a contract of payment of interest on a mortgage. In such a case, the Chief Court refused to allow any interest. 64 P.R. 1866. **A**

D.—INTEREST ON MORTGAGE-DEEDS—(Continued).

(38) Interest—Mortgage—Registration.

For the purposes of the Registration Act, the consideration of the mortgagee must only be referred, and the amount of interest that might subsequently accrue due need not be taken into consideration. C.P. Sel. Cases No. 1 (1882). **B**

(39) Future interest in a suit for sale of mortgaged property—Court fee payable.

Art. 17, cl. (6) of Sch. II of the Court Fees Act, regulates the fee payable upon an appeal preferred in respect of future interest on a mortgage debt which is sought to be enforced by sale. 27 A. 559=2 A.L.J. 263=A.W.N. (1905), 84. **C**

(40) Ss. 86 and 88, Transfer of Property Act, effect of, on rule of damdupat.

Under Ss. 86 and 88 of Transfer of Property Act, the mortgagee is entitled to a decree for interest at the rate contracted for. This rule must be taken to supersede the rule of Damdupat, on the principle, that an anterior general rule must give way to a later special rule introduced by statute. 26 M. 662 (670). **D**

(41) Valid tender stops the running of interest—S. 84, Transfer of Property Act.

(a) Although a tender does not extinguish the indebtedness, a valid tender, which is kept good, stops the running of interest after the tender. The principle applies to tenders by tenants to landlords. 5 C.L.J. 270. **E**

(b) A person cannot be mulcted in interest after he has offered the amount due on a certain date, if the amount has been wrongfully refused by the creditor. 4 L.B.R. 108. **F**

(c) According to S. 84 of the Transfer of Property Act, interest on the principal sum ceases from the date of the tender of "the amount remaining under the mortgage" that is, of the exact amount. The section does not provide that, although the exact amount is not tendered, interest shall cease *pro tanto*. 6 O.C. 135. **G**

(d) Where, in a suit on a bond, the defendant had offered to pay the sum due with interest into the Court, *held* that the defendant was not liable to pay interest from the date of his offer of payment. 1 M.H.C. 124. **H**

(42) Valid tender—wrongful refusal—subsequent suit—duty of debtor.

(a) But when the creditor, after his wrongful refusal to accept the tender of debt, brings a suit, it is the duty of the debtor on receiving intimation of the suit to at once pay the money into Court. 4 L.B.R. 108. **I**

(b) Thus, where the debtor made a tender of the debt to the creditor which was wrongfully refused by him, and the creditor subsequently instituted a suit against the debtor, who, however, failed to pay the amount into Court, it was *held* that the debtor should not be liable for interest from the date of his tender until the date of the suit, but that interest from the date of the suit up to the date of realisation was to be awarded to the creditor. 4 L.B.R. 108. **J**

(43) Tender under protest is no valid tender.

A judgment debtor, who wants to be released from the claim of his creditor, must pay the money covered by the decree into Court to the credit of the decree-holder unconditionally. If he chooses to make a protest, the creditor is not bound to take out the money subject to any liability which may arise as a consequence of such protest. If the judgment-debtor's objection is proved to be useless he shall have to pay interest also during the time the money had been deposited in Court. 2 C.L.R. 183. **K**

D.—INTEREST ON MORTGAGE-DEEDS—(Concluded).**(44) Where there was no evidence that tender was proper, interest does not cease.**

(a) Where the lower Court found, that a tender by the mortgagor of the mortgage amount had been made, and there was no finding whether the tender was a proper one, or whether after the tender was made the mortgagor kept the mortgage money unemployed, *held* that the mortgagor was liable to pay interest after the date of tender. 8 C.W.N. 153. **L**

(b) Where there is no proper tender of the mortgage amount, interest will continue to run, as S. 84 of the Transfer of Property Act applies only to a case of proper tender. 2 N.L.R. 62. **M**

(c) A judgment-creditor like any other creditor is not bound to accept a tender of a sum admittedly less than what is due to him, and he has right to insist on being paid the principal with interest in full. If he refuses to receive a sum which is a part of what is due to him, his refusal will not deprive him of his right to interest. 7 W.R. 20. **N**

(45) Proper course is to deposit the money in Court.

The proper course is to deposit money in Court under S. 83, Transfer of Property Act. 8 C.W.N. 153. **O**

(46) Deposit in Court of decree debt—Effect in interest—Notice to creditor.

The question whether interest is payable on the decree amount only till the deposit of the amount by the judgment debtor or up to the date on which the decree-holder applied to get the money deposited from the Court, depends on whether the decree-holder had any notice of the money being so deposited or not. 16 W.R. 304. **P**

(47) Minor mortgagee—Deposit in Court—S. 103, Transfer of Property Act.

Where the mortgagee is a minor, interest on the mortgage amount will continue to run although the mortgagor has deposited the amount in Court, until he has procured the appointment of a guardian *ad litem* to receive service of notice and to take deposit out of Court under S. 103 of the Transfer of Property Act. 27 B. 23. **Q**

(48) Whether T. P. Act governs a case brought after the Act, on a mortgage executed before the Act.

In a suit to enforce a simple mortgage brought after the passing of the Transfer of Property Act, but the legal relations of creditor and debtor having arisen before it, it was doubted whether the above fact would prevent the application of the Act. 26 C. 39=25 I.A. 179=2 C.W.N. 633 (P.C.) **R**

E.—INTEREST, 'POST DIEM.'**(1) Post diem interest is in the nature of damages.**

(a) On a mortgage bond for a term certain, but containing no provision for payment of interest in case of default, *post diem* interest can only be recovered as damages for the detention of the debt. 13 A. 330. **S**

(b) When interest is payable under a contract, it is said to be recoverable as a part of the debt itself; but when it is not so payable it is recoverable only as damages for the detention of the debt. 18 M. 331. **T**

E.—INTEREST, 'POST DIEM'—(Continued).

- (c) Where interest, as such, is not payable after the due date of the mortgage, either by express or implied agreement, the mortgagee can only seek compensation for the non-payment of the principal on the due date, by claiming damages for breach of the contract. 11 A. 416. **U**
 - (d) Interest, as interest, cannot be allowed on money lent in India on a hypothecation bond, or on a deed of conditional sale unless it appears from the bond or deed, that it was the intention of the parties that interest should be payable. Interest, in such a case, will only be payable for the period during which it appears that it was so intended. In the absence of such intention interest *post diem* can only be awarded as damages. 10 A. 85. **Y**
 - (e) A mortgagee cannot claim interest, as interest, after the date fixed for the payment of the mortgage debt unless the bond specially provides for *post diem* interest. But interest up to the date of the institution of the suit may fairly be awarded by way of damages. 3 C.P.L.R. 48. **W**
- (2) **Post diem interest—No difference between simple bonds and mortgage deeds.**
In respect of *post diem* interest, no distinction can be drawn between simple bonds and mortgage bonds. 18 A. 330. **X**
- (3) **Post diem interest on mortgage debt may be allowed under Interest Act.**
- (a) Under the Interest Act (XXXII of 1839), the Court has power to give interest upon the mortgage money, as it is money payable at a certain time and under a written instrument. Interest *post diem* may, therefore, be awarded at such rate as is reasonable, if not always at the rate mentioned in the contract. 18 M. 248. **Y**
 - (b) Under the Interest Act, the Court has power to give interest upon the mortgage debt, as it is money payable at a certain time and under a written instrument. 21 C. 274. **Z**
 - (c) *Post diem* interest was awarded under Act XXXII of 1839 although no contract for *post diem* interest could be inferred from the mortgage deed. 18 M. 388 (Note). **A**
 - (d) Where a mortgage debt contains no stipulation for payment of interest after due date, interest will be payable by virtue of Act XXXII of 1839. 24 C. 699=1 C.W.N. 487. **B**
 - (e) When there is nothing in a mortgage to indicate that the parties did not intend that interest should be paid after the expiration of the due date, the mortgagee is entitled to *post diem* interest. 20 M. 371. **C**
 - (f) It is competent for a Court passing a mortgage decree to give interest beyond the date fixed for payment and up to the date of realization. 5 C.W.N. 137 (P.C.)=3 Bom. L.R. 511=23 A. 181. **D**
 - (g) The question whether a decree under S. 88, read with S. 86 of the Transfer of Property Act, should allow interest beyond the date fixed for payment and until realization was considered by the Privy Council in 26 C. 39 and answered in the affirmative. 21 A. 361. **E**
- (4) **S. 88, Transfer of Property Act, whether makes such interest recoverable out of the mortgaged property.**
- (a) The terms of S. 88 of the Transfer of Property Act make such *post diem* interest recoverable out of the mortgaged property. 21 C. 274 (See 17 A. 571). **F**

E.—INTEREST, 'POST DIEM.'—(*Continued*).

- (b) The joint effect of the Interest Act and S. 88 of the Transfer of Property Act is in favour of the award of interest *post diem* as interest till date of payment, at a reasonable rate, and as a charge upon the mortgaged property. 18 M. 248, (See 17 A. 571). **G**
- (c) When, in a suit for sale under Ss. 88 and 89 of the Transfer of Property Act, a Court allows, under Act XXXII of 1839, interest *post diem*, its decree so far as such *post diem* interest is concerned is not a decree for sale under S. 88, but is a decree for money, which can be executed in the manner provided for a simple money decree. 17 A. 581. But see 21 C. 274 and 18 M. 248 noted above. **H**
- (5) **Whether mortgaged property can be redeemed until such interest is paid.**
- (a) Under S. 88, Transfer of Property Act, the mortgagor cannot redeem unless and until *post diem* interest also, if any is due, is paid to the mortgagee. 24 C. 699=1 C.W.N. 437. **I**
- (b) In a suit by a mortgagor for redemption of the mortgage, it was held that he could not redeem without fulfilling the conditions of his agreement, and that he should pay interest up to the last possible moment that it could be reasonably claimed for. 33 P.L.R. 1903. **J**
- (c) Where a mortgage-deed did not specifically provide for *post diem* interest or make such interest a charge on the land, held that the mortgage could be redeemed only on payment of the principal, the interest specifically contracted for, and *post diem* interest by way of damages which accrued within six years of suit. 95 P.R. 1902=21 P.L.R. 1903. **K**
- (d) Interest due under a mortgage is a charge upon the land, in the absence of a contract to the contrary. A person having the right of pre-emption, in respect of a land comprised in a mortgage by conditional sale, can do so only on payment of the entire amount due on such mortgage, at the time it became absolute. 121 P.R. 1894. **L**
- See also cases noted under "POST DIEM INTEREST," *infra*.
- (6) **Where there is an express contract between the parties for *post diem* interest the contract rate must be allowed.**
- Where a bond contains an express covenant for the payment of interest after the date, at the rate stipulated for, to be paid up to the due date, then the interest will not be affected by the considerations of the reasonableness or otherwise of the rate, because the amount is agreed upon by the parties. 7 A. 333. **M**
- (7) **Even where there is no express contract, intention to pay *post diem* interest may be presumed.**
- (a) A promise to pay interest expressed in general words contained in a registered mortgage bond was held, having regard to the ordinary intention of the parties entering into such transactions, to be a promise to pay interest until the actual liquidation of the principal. 23 M. 534. **N**
- (b) In the absence of any controlling clause, a general condition as to payment of interest cannot be cut down so as to deprive the mortgagee of his right to claim interest after the due date. 14 C.P.L.R. 49.

E.—INTEREST, 'POST DIEM.'—(*Continued*).

- (c) Where a bond-debt is not discharged on the date on which it falls due, it does not require a special contract to make the interest run on from the above date to the date of the payment of the debt. It is within the discretion of the Court to decide the rate at which interest for such further period shall run. 25 W.R. 189=2 C. 41. **P**
- (8) Such intention is, *prima facie*, presumed to be to pay the same rate of interest as is mentioned in the contract.
- (a) Where a bond stipulated for the re-payment of the amount due under it with interest on a certain day, but made no provision for interest on default, *held*, that the intention of the parties was only to prevent the creditor from demanding payment before that day and, therefore, if the amount was not paid on the due date, the creditor was entitled to interest at the same rate for the period subsequent to the due date. L.B.R. (1893-1900), 457. **Q**
- (b) In a simple mortgage transaction, it is not an unusual intention that, if the principal money be not paid by the stipulated time, interest should continue to run at the stipulated rate. 25 C. 246. **R**
- (c) In a suit on a mortgage-deed, containing covenants by the mortgagors, to pay the principal with interest at a certain rate within a year, and not to transfer the property mortgaged until the payment in full of the amount due for principal and interest, which also provided that payment should be first applied in reduction of interest, *held*, that the mortgagee was entitled to *post diem* interest at the same rate up to the date of the decree, although there was no such express provision in the deed, and after decree at the rate of 6 *per cent*. 19 A. 89 (P.C.)=23 I.A. 138. **S**
- (d) Where a bond contained a stipulation for the payment of interest annually, and there was nothing in it to suggest that the liability should cease on the day on which the principal was made payable, interest which had accrued subsequent to the date stipulated for the repayment of the principal sum, could be recovered at the rate provided for in the bond. 22 M. 339. **T**
- (e) Where a bond provided for interest at the rate of 2 *per cent*., till the due date, and there was no stipulation as to *post diem* interest, *held* that the same rate should be allowed at the due date. 4 A.W.N. 40. **U**
- (9) Even in the absence of any such presumption of contract, interest *post diem* may be allowed as damages.
- (a) Even where a document is construed as having no covenant to pay interest after the due date, the plaintiff will be entitled, on default being made in the payment, to recover interest technically as damages, and the rate will *prima facie* be the same as that provided by the bond up to the due date, although there is no rule of law making that rate necessarily the measure of damages. 17 A. 511 (P.C.)=22 I.A. 199. **Y**
- (b) The principle upon which an obligee of a bond may recover interest after due date does not rest upon any implied contract by the obligor to pay such interest, but proceeds upon the breach of contract which has taken place by reason of the non-payment on due date, and the reasonable amount to which the obligee is entitled for such breach. 8 A. 486. **W**

E.—INTEREST, 'POST DIEM.'—(*Continued*).

- (c) The question as to the amount of interest to be allowed to a plaintiff in a suit on a bond which does not provide for interest after the due date, subsequent to the expiration of the due date, is one of damages. 2 A. 617. X
 - (d) What is recoverable in a suit upon a breach of contract to pay money with interest is compensation in money by way of damages, and not interest as such, though the stipulated rate of interest may be good evidence of the proper measure of compensation. 99 P.R. 1894. Y
 - (e) In the absence of any defined rate of interest to be paid after the period of the bond, an implied contract to pay the same rate cannot be allowed, and the question, then, will be what will be a reasonable rate of interest to be allowed. 1 A. 603. Z
- (10) The rate stipulated for in the bond may generally be a fair measure of damages.
- (a) Where interest *post diem* is awarded as damages, the rate that was paid during the term of the bond, will, ordinarily, be a fair measure of the rate to be allowed as damages for breach of the contract to pay at the stipulated time, provided the rate stipulated for is not excessive. 1 A. 603. A
 - (b) The rate of interest agreed on between the parties to be paid under the bond will, ordinarily, be a reasonable basis on which to estimate the damages caused to the creditor, by reason of the debtor's failure to pay at the stipulated time. 2 A. 617. B
 - (c) Where the contract provided for interest at 15 *per cent. per annum*, the Privy Council allowed *post diem* interest at such rate down to the date of the institution of the suit, and from that date to the date of payment, it was reduced to 6 *per cent. per annum*. 17 A. 511 (P.C.) C
- (11) If the stipulated rate is high, *post diem* interest must be reduced to reasonable limits.
- (a) Where interest awarded is high, *post diem* interest may be reduced to a reasonable amount. 42 P.R. 1872. D
 - (b) Where, on a contract for the re-payment of money borrowed at a certain rate on a day fixed, there was no mention that the interest was to continue at that rate after the due date, *held* that further interest would be awarded at a reasonable rate. 3 B. 131. E
 - (c) After the date fixed for payment, the plaintiff could not claim any particular rate of interest but is entitled only to fair interest. 6 C.P.L.R. 11. F
 - (d) Where a bond did not provide for the payment of interest after due date, *held*, that the lower Court was justified in awarding a lower rate of interest than that provided for in the bond up to the due date, in consideration of the delay of the plaintiff in instituting the suit. 2 A. 617. G
 - (e) Where a bond stipulated that the principal with interest at the rate of Re. 1-8-0 *per cent., per mensem*, should be repaid by one year, after the lapse of which payment was to be made on demand, *held* that the creditor was not entitled to *post diem* interest at the contract rate, and that 9 *per cent.* would be reasonable compensation. 95 P.L.R. 1902. H

E.—INTEREST, 'POST DIEM.'—(Continued).

- (f) Where money lent was repayable on the day fixed with interest, the creditor cannot recover interest at the same rate after that date, without a fresh arrangement to that effect, express or implied. 98 P.R. 1866. I
- (g) Where a bond makes no stipulation for the payment of interest after the date fixed for re-payment, the Court may award such interest as it thinks reasonable by way of damages, on account of loss of the use of the money, owing to its non-payment by the defendant. L.B.R. (1872-92), 570. J
- (12) Grant of *post diem* interest is in Court's discretion—Intention of parties to be gathered from the instrument and circumstances.
- (a) There is no fixed rate at which interest must, by law, be allowed for the period between the time when the bond becomes payable and the commencement of the suit. This is a matter which is entirely in the discretion of the Court, having regard to all the circumstances of the case. 11 W.R. 68=2 B.L.R. Ap. 10. K
- (b) In the absence of express stipulation, a contractual obligation to pay interest may be established by proof of circumstances showing the intention of the parties that interest *post diem* shall be paid 4 M.L.J. 261. L
- (c) Where it appears from endorsements on the bond, in the handwriting of the obligor of the bond, that he has continued to pay interest at the rate stipulated for on the bond, after it has fallen due, that is a strong circumstance to show that both parties understood that the debt is to continue to bear interest at the rate stipulated for in the bond. 15 W.R. 284. M
- (d) In the case of a mortgage-deed in which there is a rate of interest fixed without any specific condition that its payment shall cease on a certain contingency, and a clause specifying a date of redemption and conditional sale, it must be held generally, in the absence of clear intention to the contrary, that the contract does not contemplate the cessation of interest from the date when the payment of capital sum becomes due. 77 P.R. 1898. N
- (e) A stipulation in a mortgage-bond to pay on demand the principal and interest due on the bond if the mortgagor did not redeem the property within seven years, was construed to amount to a contract for the continuance of the rate of interest, provided for during the period fixed for redemption, until date of realization. 68 P.R. 1883. O
- (f) A mortgage instrument, after stating how the debt had come to be due, stipulated for the payment of the principal and interest which may accrue at the rate of $\frac{3}{4}$ rupee *per cent.*, *per mensem*. The interest was to be paid on the 30th of Panguni each year and, in case of default, compound interest was payable. The principal was to be paid on 14th July, 1886. *Held*, on a construction of the document, that the mortgagor incurred the obligation to pay interest on the principal amount remaining unpaid on the 14th July, 1886. 20 M. 149. P
- (g) A bond stipulated that the obligor should pay the amount of it with interest at Re. 1-12-0 *per mensem* within two years and, in case of default, the obligee would be at liberty to recover the amount of debt including the principal and interest from his person and property. To

E.—INTEREST, 'POST DIEM.'—(*Continued*).

secure the payment of the principal and interest, the obligor hypothe-
cated his four anna share in a particular village. *Held*, that the
interest referred to in the bond, as payable to the obligee, alike during
the term of the contract, and until date of payment, was Re. 1-12-0
per mensem, and that interest at that rate should be awarded.
1 A. 603. Q

- (h) A contract to pay interest *post diem* on a mortgage ought not to be implied
by a Court in India, when the parties to the written contract have
not expressed any such intention in the contract which they executed.
This is particularly the case, when the parties to the mortgage do not
provide in very clear terms for interest and compound interest during
the term of the mortgage. 11 A. 416. R

- (i) It was found by the Court, on the construction of a bond, that the agree-
ment for the payment of interest at 24 per cent., was, in the intention
of the defendant, to operate for one year only, and that at the end of
that period he had a right to have his account made up and the rate of
interest reconsidered and adjusted. *Held*, that the plaintiff was entitled
only to damages for non-payment after the expiration of that period,
and that interest at 6 per cent., on the amount of the principal due
would be a reasonable measure of damages. 3 B. 131. S

- (j) A mortgagor agreed to pay the mortgage amount within 4 months with
interest at 2 per cent., *per mensem*, and that, on failure of such payment,
the mortgagee should be placed in possession. The property was not
redeemed nor was the mortgagee given possession on the due date.
Held, in a suit by the mortgagor for redemption, that the mortgagee
is entitled to the mortgage amount with 2 per cent. interest for the 4
months. Interest subsequent to that would be recovered only as dama-
ges (and not as a charge) if not barred by limitation. 8 P.R. 1890. T

- (k) A mortgage-deed stipulated, in general terms, that interest was to run upon
the principal advanced, without any limitation as to the period of its
currency. And it was also stipulated that, in default of punctual pay-
ment, at the end of each year, the creditor was to be at liberty to treat
interest as principal and to recover it from the mortgaged property.
Held that, according to the tenor of the deed, it was not intended
that the capital sum should cease to bear interest, upon the arrival
of the time stipulated for its payment. 20 A. 171 (P.C.)=25 I.A. 9;
2 C.W.N. 129. U

- (l) The mortgage instrument in this case was construed to have provided for
post diem interest, and interest at the stipulated rate was awarded up
to the date of the lower Court's decree and, thereafter, at the rate of
six per cent. *per annum*. 23 I.A. 138 (P.C.)=19 A. 39=6 M.L.J. 214. V

- (m) When the rate of interest on the bond is exorbitant, and there is no ex-
press understanding that interest is to continue at the same rate, after
the expiration of the period mentioned for repayment in the bond, a
Judge need not necessarily assume that the parties are bound by any
contract that interest should continue at that rate after the time men-
tioned in the bond. On a bond bearing interest at 60 per cent. *per
annum*, it was held that the lower Court was justified in allowing
12 per cent. *per annum*, after the due date of payment, under the pro-
visions of Act XXXII of 1839. 15 W.R. 284. W

E.—INTEREST, 'POST DIEM.'—(Continued).

- (n) Although cases might arise in which a jury or a Judge might refuse to grant a plaintiff, the bond not providing for interest after due date, any interest at all as damages, yet, the circumstances would have to be of a very exceptional character as, for example, where the interest contracted to be paid before due date was exorbitant and extortionate. 8 A. 486. **X**
- (o) The terms of a mortgage-deed were, that the mortgagors will redeem the land within one year, paying the principal debt and interest at the rate of one *per cent.*, *per mensem*, and in case of default the mortgagee may take possession of the land in lieu of the principal sum and interest. The deed was construed as providing for simple mortgage for one year and, if not redeemed by that time, for the conversion of the simple mortgage into a usufructuary mortgage with possession. 175 P.L.R. 1901=114 P.R. 1901. **Y**
- (13) **Unreasonable delay, ground for refusing post diem interest.**
 In determining the rate of interest which may be allowed as damages on breach of contract to pay a bond debt on the due date, the question whether the plaintiff has unnecessarily delayed in bringing his suit, and so allowed his claim to mount up to a sum far in excess of the principal money originally advanced, may be taken into consideration as a reason for not making the original rate of interest as the basis on which to assess such damages. 8 A. 486. **Z**
- (14) **Post diem interest, for what period recoverable—Limitation.**
- (a) Where there is no provision in a mortgage instrument for the payment of *post diem* interest, the mortgagee is entitled to recover six years arrears of interest by way of damages. Every day the principal amount remains unpaid there is a breach of contract, and the bar of time applies only to breaches occurring six years before suit. 23 I.A. 138=19 A. 39=6 M.L.J. 214. (But see 19 C. 19, 8 C.P.L.R. 95, 18 M. 331, 18 M. 257, 2 M.L.J. 235). **A**
- (b) The failure to pay at the due date the amount due on a mortgage-bond furnishes a recurring cause of action and renders admissible a claim for *post diem* interest not provided for in the bond; such interest is a charge upon the mortgaged property. 12 C.P.L.R. 18. But see 8 C.P.L.R. 95. **B**
- (c) Where a mortgage-deed contains no stipulation for payment of *post diem* interest, a suit for such interest, being in the nature of a suit for damages, is governed by Art. 116, Sch. II, Limitation Act; only six years' interest after due date is recoverable. 24 C. 699=1 C.W.N. 437. **C**
- (d) A deed of conditional sale contained no stipulation for payment of interest after the date fixed in it for payment. The mortgagee, however, claimed interest after the due date. *Held*, that such interest was in the nature of compensation for breach of the contract, and that it could be allowed only if the claim was put forward within six years from the date of the breach of the contract. 19 C. 19. **D**
- (e) Where a mortgage bond was for a term certain and contained no stipulation for *post diem* interest, the claim for *post diem* interest is to be considered as a claim for compensation for breach of contract, and a suit to enforce such claim should be brought within 6 years from the date of the breach. 8 C.P.L.R. 95. But see 12 C.P.L.R. 18. **E**

E.—INTEREST, 'POST DIEM.'—(Continued).

- (f) In the case of a mortgage debt payable with interest at a certain time, there being no promise to pay *post diem* interest, there can be no doubt that the mortgagee's claim for *post diem* interest can be sustained, only on the ground that it is compensation for the detention of a debt due under a contract in writing registered, and, consequently, Art. 116 of the 2nd Schedule of the Indian Limitation Act must apply. 18 M. 381. **F**
- (g) On a mortgage debt not providing for interest after due date, *post diem* interest can be given on the principle, not of contract, but of damages for breach of contract and Art. 116 of the Sch. II of the Limitation Act applies. 18 M. 257. **G**
- (h) Where there is no express or implied agreement to pay *post diem* interest, such interest can only be claimed as damages for breach of a contract in writing registered within the meaning of Art. 116 of Limitation Act, 10 A. 85 (91). **H**
- (i) Where a document contains no provision for the payment of *post diem* interest, a claim for such interest being in the nature of damages, is governed by Art. 116 of Sch. II, Limitation Act. 7 M.L.J. 235. **I**
- (j) Where, by the terms of an anomalous mortgage, the parties did not intend that the mortgagee should, in any event, be entitled to a decree for sale in respect of interest, *held* that the mortgagee could only recover interest, as damages for non-payment of the mortgage amount on the due date, for six years previous to the suit under Art. 116 of the Limitation Act. 7 O.C. 11. **J**

(15) Where contract provides for *post diem* interest—Limitation.

If *post diem* interest be provided for by the contract, it is just as much a charge on the mortgaged property as the principal, and the mortgagor cannot redeem until he pays it. In such a case Art. 132 of the Limitation Act would apply. 1 C.W.N. 437 (439) (F.B.)=24 C. 699. **K**

(16) *Post diem* interest, whether charge on mortgaged property—Decisions conflicting.

- (a) Under S. 88 of the Transfer of Property Act, the mortgagor cannot redeem unless and until the *post diem* interest, if and when found due, be paid. 24 C. 699 (F.B.)=1 C.W.N. 437. **L**
- (b) Interest on the mortgage is not necessarily only the interest which the parties to the mortgage stipulated to be paid, but would include interest which, under the law, is payable. Thus interest after the time stipulated for payment, may be included as interest. And this interest is recoverable from the property in the same way as the mortgage money and the costs. 21 C. 274 (278). **M**
- (c) The joint effect of the Interest Act and of S. 88, Transfer of Property Act is in favour of the grant of interest *post diem* as interest till the date of payment, at a reasonable rate, and as a charge upon the mortgaged property. 18 M. 248 (250). But see 18 M. 257=2 M.L.J. 235. **N**
- (d) Where a document contains no provision for *post diem* interest a claim for interest for the period subsequent to the due date cannot be treated as a charge on the hypothecated property. 2 M.L.J. 235=18 M. 257. **O**

E.—INTEREST, 'POST DIEM.'—(*Continued*).

- (e) Even in cases in which *post diem* interest is not specifically contracted for, such interest is recoverable as a charge on the mortgaged property. 95 P.R. 1902=21 P.L.R. 1908. But see 114 P.R. 1894, noted *infra*. P
- (f) *Post diem* interest, being in the nature of damages, cannot form an integral part of the mortgage-debt; and so it could not be treated as money charged on the mortgaged property. 18 A. 880. Q
- (g) A decree for damages for non-payment of the mortgage-money on the due date, the mortgage-deed not providing for *post diem* interest, cannot constitute a charge under the Transfer of Property Act. 18 A. 316. R
- (h) The phrase "Interest on the mortgage" in S. 86 of Transfer of Property Act means interest due on the mortgage, and not interest allowed by the Court under the Interest Act (XXXII of 1839). The latter interest is neither due, nor does it become due, under the mortgage. It becomes due upon the decree of the Court and under that decree alone, and consequently it is not part of the amount on default of payment of which the mortgaged property as such can be sold under S. 89, Transfer of Property Act. 17 A. 581 (588). S
- (i) When, in a suit for sale under Ss. 88 and 89 of the T. P. Act, a Court allows, under Act No. XXXII of 1839, interest *post diem*, its decree, so far as such *post diem* interest is concerned, is not a decree for sale under S. 88 but is a decree for money which can be executed in the manner provided for the execution of simple money-decrees. It is only under the Transfer of Property Act, that a Court can, in a suit on a mortgage, make a decree for sale of the mortgaged property as such, and a Court has no jurisdiction to extend those sections by decreeing a sale of the mortgaged property if the interest which it allows under Act XXXII of 1839 be not paid. 17 A. 581 (588). T
- (j) An agreement to pay interest on a mortgage year by year and to redeem the mortgaged property only on condition of paying the principal and interest due by him makes the interest a charge upon the mortgaged property, and effect must be given to it. 28 P.R. 1892. U
- (k) Where there is no covenant in the mortgage to pay interest after the due date, such interest as is not barred by the limitation of six years, may be recovered and may be declared as a charge on the mortgaged property. 73 P.R. 1892. Y
- (l) Only such interest on the mortgage amount which has become due under the terms of the mortgage bond can be charged on the mortgaged property. 114 P.R. 1894. W
- (m) Interest by way of damages after the expiry of the mortgage cannot be added to the mortgage money in a suit for foreclosure. 6 C.P.L.R. 22. X
- (n) *Post diem* interest and mortgage debt cannot be made a charge on the mortgaged property. 8 O.C. 11. Y
- (17) Where there is a contract for *post diem* interest, such interest is charge on the property.

If *post diem* interest is provided for in a mortgage, it is just as much a charge on the property as the principal, and the mortgagor cannot redeem until he pays it. 24 C. 699 (F.B.)=1 C.W.N. 437. Z

E.—INTEREST, 'POST DIEM.'—(*Concluded*).

- (18) **Even where such contract is implied, such *post diem* interest is a charge on the property.**

Where a contract to pay *post diem* interest may be inferred from a mortgage deed, it can be made a charge on the property' even though the bond fell due more than six years before the date of the suit. 4 M.L.J. 262. **A**

- (19) **Such contract can be implied from conduct of the parties.**

Where a mortgagor pays *post diem* interest, though there is no such provision in the instrument, an implied contract to pay such interest may be inferred. 4 M.L.J. 261. **B**

- (20) **Court may grant execution against mortgaged property, even when the decree debt is not a charge.**

If the mortgaged property is in the possession of the mortgagor, no doubt, the decree for damages which would be a decree for money, might be executed, if the Court thought fit so to grant execution of it, against the hypothecated property; but that would be a proceeding under the Civ. Pro. Code, and not under the Transfer of Property Act. 18 A. 316. **C**

F.—INTEREST ON DECRETAL AMOUNT.

- (1) **Interest on the decretal amount from date of suit to date of decree is in Court's discretion.**

(a) S. 209, Civ. Pro. Code, gives the Court the discretion to allow interest on the decretal amount from the date of suit to the date of decree. 9 C.W.N. 421=32 C. 582. **D**

(b) There is no law which enjoins the Court to award interest on the sum decreed. So a refusal of the lower Court to award interest on the sum decreed may be argued against in a regular appeal but cannot form the subject-matter of a special appeal. D.C.R. Part X, 62. **E**

(c) It is not a mere matter of course to give interest in a decree, and it is still less a matter of course, to give interest at a particular rate. The grant of interest is, in every case, a matter for the judicial determination of the Court which grants the decree. 14 W.R. 62. **F**

(d) Thus, where a Judge, after a lapse of two years from the hearing of a case, altered his decree in respect of interest, he was held to have made a substantial alteration in the decree, and that he was thereby substantially, if not in form, granting a review, and that, therefore, some good ground for the delay ought to have been shown. 14 W.R. 62. **G**

(e) But this does not mean that if the parties apply promptly to correct an oversight, when the whole of the argument and all the facts are fresh in the mind of the Court, that an obvious error or omission may not in some cases be corrected without the tedious and expensive process of a review. (*Ibid.*) **H**

(f) If the intention of the Court had been to grant the principal sum with interest thereupon down to the date of the decree, and interest on the aggregate sum thereafter, as the Court was empowered to do, that would have been distinctly expressed, and would have been accompanied with precise directions as to the rate of interest to be allowed for either period. In the absence of such distinct expression, the Court would be justified in giving interest only from the date of the decree and not from the date of suit. 12 W.R. 50=3 B.L.R. Ap. 105. **I**

F.—INTEREST ON DECRETAL AMOUNT.—(Continued).

(2) Interest after suit may be disallowed or diminished if prior rate of interest was high.

- (a) Where a high rate of interest has been awarded up to the date of suit, no further interest should ordinarily be allowed. L.B.R. (1899-1900), 332. J
- (b) Where a bond stipulated for interest at 1 *per cent.*, *per mensem*, compound interest at six monthly rests, and for 2 *per cent.* if the amount due was not paid on a specified date, the Court allowed 2 *per cent.*, up to the date fixed by the bond for repayment, and 1 *per cent.*, after that date. 4 A.W.N. 280. K

(3) No right to interest where decree does not award it.

Where a decree of the Court does not provide for the payment of interest on the sum decreed, the decree-holder is not entitled to interest. 11 P.R. 1878. L

(4) Where decree does not provide for interest, executing Court cannot grant it.

- (a) Where a decree does not provide for the payment of interest, the Court executing the decree cannot award it. 81 P.R. 1868. M
- (b) When the decree does not provide for payment of interest upon the principal decreed, no Court, ordinarily, can add an order for payment of it in course of execution. 5 W.R. Miscell. 218. N
- (c) If the decree itself be silent as to interest, the Court executing the decree has no power to award it. 6 W.R. (F.B.), 109 = B.L.R. Supplemental Vol. 602. O
- (d) The Court executing a decree of the High Court has no authority to alter it in any way, but should execute it as it stands. 10 W.R. 60. P
- (e) A decree-holder was held not to be entitled to interest for the period of the pendency of the suit when the decree sought to be executed did not grant such relief. 17 W.R. 19. Q
- (f) Where a decree contains no order for interest upon the amount claimed, the Court which is charged with the execution of the decree has no power to give interest. Such a decree cannot be reformed on a miscellaneous appeal from the order of the Subordinate Judge executing the decree. 20 W.R. 477. R
- (g) It is a settled doctrine that a Court of execution cannot award interest when the decree is silent. *A fortiori* this doctrine must apply where, as under S. 497, Code of Civil Procedure, a special procedure is provided for in a different forum. 22 B. 42. S
- (h) A Court executing a decree cannot allow interest where the decree itself does not. 22 B. 42. T

(5) This rule applies even if decree be based on a confession of judgment which provided for interest.

Even where a judgment was given in accordance with a confession of judgment which provided for interest, the decree-holder will not be entitled to interest in execution, if the decree does not provide for interest, and if the decree is intelligible and executable by itself without reference to the judgment. 13 P.R. 1886. U

(6) Proper procedure in such cases indicated.

- (a) The proper mode in such cases is to apply to the Court that passed the decree to amend the decree. 10 W.R. 60 (But see 15 A. 121). Y

F.—INTEREST ON DECRETAL AMOUNT.—(Continued).

(b) It is illegal for a Court to decree a claim for interest by way of amendment of its decree. 15 A. 121 (But see 10 W.R. 60). **W**

(c) Where a Judge, in adjudging a specific sum, principal and interest, proceeds in terms to dismiss the rest of the claim, it is not open to the same Court, in a petition for the amendment of the decree by adding interest on the decretal amount, to speculate whether the Judge that passed the decree had or had not in his mind the question of interest. The Court must take the words of the judgment as it finds them. 15 A. 121 (122). **X**

(7) So also where decree grants interest, executing Court cannot reduce it.

Where a decree awarded a certain sum of money, which was calculated in the schedule, plus costs and interest, the Court executing the decree was held to have committed an error by reducing the rate of interest during the pendency of the suit. 19 W.R. 46. **Y**

(8) Decree granting interest but silent as to rate of interest—Power of executing Court to fix the rate.

(a) Where interest is allowed by the decree, but no rate is specified, a Court executing the decree will not be justified in absolutely refusing to allow interest, and the preponderance of authority is in favour of the usual Court rate in such cases. 6 C.L.R. 231. **Z**

(b) Where a decree awarding interest does not specify the rate of interest, the Court executing the decree should not allow any higher rate than 12 *per cent.* the usual Court rate. 7 W.R. 375. **A**

(c) When the Court, which passed the decree, had abstained from stating the rate at which interest subsequent to the decree was to be calculated, *held* that the Court executing the decree was not wrong in awarding interest at Rs. 3 *per annum*; and it would have been equally proper if the Court had refused to give any interest at all. 19 W.R. 46. **B**

(d) A decree did not specify any rate of interest, either as regards the part of it which accrued before the date of the decree, or that part of it which might accrue after the date of the decree. But in calculating the amount then due, it was found that the Court gave 12 *per cent.* It was also the usual rate. *Held*, the intention of the Court was to give the same rate. 17 W.R. 414. **C**

(e) Where a decree awarded interest, without specifying the rate, from the date of the decree to the date of realization, the Court executing the decree was held to have rightly fixed it at 12 *per cent.*, the usual rate. 7 B.L.R. Ap. 30. **D**

(9) In such cases other documents than the decree may be referred, to fix the rate.

Where a decree of the Privy Council awards interest, but does not specify the rate of interest, the Court should see whether, from other parts of the decree itself, or from other documents if there are any, which the Court is at liberty to read in conjunction with the decree, it can be ascertained what the rate of interest intended to be given is. 18 W.R. 103=18 B.L.R. Ap. 44. **E**

(10) Where decree is silent as to interest, it may be recovered as damages by separate suit.

Where a decree is silent as to future interest, interest cannot be recovered by proceedings in execution of the decree, but it may be recovered as damages by a separate suit. 2 C.L.R. 156 (P.C.)=3 C. 602=5 I.A. 78. **F**

F.—INTEREST ON DECRETAL AMOUNT.—(*Continued*).(11) **Old decision to the contrary, now no longer law.**

Interest runs on sums decreed as a matter of course, unless a specific order is recorded to the contrary. 5 W.R. Miscell. 12. *Overruled by subsequent decisions.* G

(12) **Power of executing Court under Act XXIII of 1861.**

- (a) Where the order of the Privy Council gave simply possession with mesne profits, and interest on arrears of mesne profits was not allowed, *held*, that the Court executing the order was empowered by S. 10 of Act XXIII of 1861 to award interest on the aggregate sum adjudged, and costs from the date of decree to the date of payment. 15 W.R. 469. H
- (b) By S. 2 of Act XXIII of 1861, the Court executing a decree can determine a question regarding the amount of interest payable on the subject matter of a suit and an appeal lies from its decision. But the appellate Court is not authorised to award interest where the decree is silent about it. 30 P.R. 1869. I
- (c) Under, S. 11, Act XXIII of 1861, a Court executing a decree has authority to award interest from the date of the decree to the date of payment on the amount decreed to be paid by the judgment-debtor to the decree-holder, if the Court which passed that decree made no order on that point. 6 W.R. Miscell. 26 ; but see 6 W.R. Miscell. 109. J
- (d) The Court awarding further interest according to S. 10 of Act XXIII of 1861 must do so from the date of the decree to the date of the payment of the principal sum adjudged, and not for a limited period. 1 M.H.C.R. 211. K

(13) **Interest not awarded by decree—Promise of judgment-debtor in open Court to pay interest, enforceable if approved by the Court.**

- (a) In cases where mesne profits or interest, which have not been awarded in the decree, are claimed, the Court executing the decree cannot import anything into the decree ; but, when the debtor, in consideration of the forbearance shown by the creditor, agrees in open Court to pay him interest, so that the creditor may be no loser by his compliance with the request of the debtor for time, the creditor, in virtue of such promise, is fully entitled to ask the Court to execute his decree for the principal with the interest due thereon from the date of such promise. 5 W.R. Miscellaneous 1. L
- (b) On the decree-holder consenting to an adjournment of sale in consideration of the judgment-debtor paying interest on the decree amount at 12 *per cent.*, which was not awarded by the decree, the Court passed the following order on the petition of the judgment-debtor :—"As the decree-holder consents, the sale is postponed for six weeks so as to enable the judgment-debtor to dispose of his property by private sale, if he can do so."

Held, that, from the order of the Court, it was to be inferred that the Court approved the condition, and that the condition could be enforced in execution of the decree. 7 M. 400. M

(14) **Claim of interest in execution proceedings—Waiver of objection by judgment debtor—Effect,**

See under Mesne Profits.

F.—INTEREST ON DECRETAL AMOUNT.—(*Continued*).

- (15) **Instalment decree—Decree silent about interest—Interest claimed and allowed on certain occasions—Court, whether bound to grant interest on other occasions.**

Where there was default in the payment of the amount of a decree payable by instalments, the Court executing it was justified in refusing interest, on objection being made by the defendant on the ground that the decree was silent about interest, although on particular occasions interest was claimed and allowed. 14 W.R. 324. **N**

- (16) **Judgment-debtor's promise to pay interest during execution of decree, can only be enforced by separate suit.**

Where a judgment-debtor promises to pay interest, in the course of the execution of a decree, he cannot be held liable to pay such interest, unless such interest is incorporated in the decree. But the decree-holder may bring a fresh suit for it. 15 P.R. 1866. **O**

- (17) **Reversal of the decree of the lower Court—Refund of money with interest.**

(a) Where a decree is reversed on appeal, the successful appellant is entitled to recover under S. 538 of the Code of Civil Procedure any sum, which, before the decree of the appellate Court, he had been obliged to pay in execution of the decree of the lower Court, with interest. 20 A. 430. **P**

(b) A person, who is entitled under S. 583 of the Civ. Pro. Code to restitution of money paid under a decree which has been reversed on appeal, can recover interest on the money paid by him in pursuance of the decree of the lower Court. No separate suit for the recovery of interest will lie as S. 244 of the Civ. Pro. Code bars such suits. 82 P.R. 1896. **Q**

(c) In liquidation of a decree which was outstanding against a judgment-debtor, he paid down the decree-amount. Subsequently the decree was modified and the amount decreed was reduced. *Held*, that the lower Court was justified in awarding the refund of the excess paid with interest. 15 W.R. 74. **R**

(d) Where, on appeal to the Privy Council, the decree of the High Court against a tenant for rent at an enhanced rate was reversed, and in the interval the landlord got 16 other decrees, *held* that the suit for refund of the arrears of rent paid would lie if brought within 6 years (Art. 120, Sch. II of the Limitation Act). *Held*, also, that, under the circumstances of the case, no interest would be allowed on the money paid in excess. 2 C.L.R. 354. **S**

(e) On an application for restitution of money collected under a decree, which was since reversed and which claimed interest at 12 *per cent.*, *per annum*, notice was given to the opposite party, but it did not specify that the application was for restitution or contain any intimation of the claim of interest. The lower Court executing the decree allowed 12 *per cent.*, the other party being *ex parte*. **T**

Held, that the order was appealable and did not operate as *res judicata* so as to prevent the opposite party from subsequently applying for reduction of the rate of interest, and that six *per cent.*, was a proper rate. 15 M.L.J. 247 = 28 M. 355. **U**

- (18) **Payment of costs of lower Court—Reversal of decree by Appellate Court—Refund of costs with interest.**

See 8 C. 262, 6 M.I.A. 1, 20 W.R. 49, 9 M. 506, and 8 A. 262, noted under "INTEREST ON COSTS." **Y**

F.—INTEREST ON DECRETAL AMOUNT—(*Concluded*).(19) **Payment for decree debt is first appropriated to interest.**

When a part payment is made on a decree payable with interest, interest on the decree amount up to the date of payment must be calculated and the amount credited to the interest. If there is a balance it must be credited to the principal. 55 P.R. 1892. **W**

(20) **Same principle applies for payment of other debts.**

See A.W.N. (1905), 167 = 2 A.L.J. 585 = 28 A. 25, 8 B.L.R. (P.C.), 110, 22 W.R. 525; see also 6 M.I.A. 289, noted under "INTEREST—MISCELLANEOUS."

(21) **Delay of judgment-creditor in executing decree—Judgment-creditors' liability for interest.**

That the decree-holder had delayed in taking out execution is no ground for relieving the decree-holder, from paying interest at the rate directed by the decree, from the date of decree until realisation. 3 C.L.R. 523. **X**

(22) **No suit for interest, when suit for principal is barred.**

A suit for interest will not lie if the suit for the principal is barred. L.B.R. (1893-1900), 618. **Y**

(23) **Interest subsequent to decree, whether added in estimating appealable value.**

Whether interest subsequent to the date of decree can be added in estimating appealable value, is a question for the discretion of the Privy Council. 8 M.I.A. 166 = 3 W.R. 14 (P.C.) **Z**

(24) **Alteration of decree in respect of interest—Delay.**

Where a Subordinate Judge made an alteration in respect of interest on a decree made by him after a lapse of two years, held, that the alteration made in the decree was illegal and therefore the order of the Subordinate Judge should be set aside. 14 W.R. 62. **A**

(25) **Modification in the rate of interest in appeal—Costs of appeal.**

A slight modification as to the rate of interest in appeal was held not to be sufficient to deprive the respondents of the costs of appeal. 10 M.I.A. 454. **B**

(26) **Deposit of part of decree amount—Interest.**

Where the judgment-debtor deposited in Court a certain amount which the Court found to be less than what was due to the decree-holder, but allowed him the benefit of his deposit, in the way of saving interest, held that the matter was in the discretion of the Court. 12 W.R. 50 = 3 B.L.R. 105. **C**

(27) **Stipulations contained in decrees are not affected by the rule against penalties.**

See 10 B. 435, 10 C. 305 (P.C.), 12 M. 161, 14 B. 274, noted under "INTEREST AMOUNTING TO PENALTY."

G.—INTEREST ON MESNE PROFITS.

(1) Interest on mesne profits whether prohibited by Interest Act.

(a) Damages for mesne profits are not a debt or sum certain payable at a certain time; nor in the case in question, had any demand, in writing, of payment of mesne profits been proved to have been made. So, the suit was held not to come within Act XXXII of 1839. 9 B.H.C. 7. See 3 C. 654 (P.C.) D

(b) Interest should not be awarded on unliquidated damages. 7 Bom. H.C.A.C. 89. E

(c) By the law and practice in India, independently of Act XXXII of 1839, a decree might award interest, as of course, on mesne profits, from the date of the institution of the suit in which they were claimed. Such interests are not prohibited by the terms of the Act referred to. 1 C.L.R. 499 (P.C.)=3 C. 654, 5 I.A. 21. F

(2) Court may consider the question of interest in estimating plaintiff's loss.

Although interest cannot be allowed upon mesne profits previously to the institution of the suit as interest strictly, the Court, in estimating what loss the plaintiff has sustained by being kept out of possession of the property, may take into consideration that, if he had received the rents year by year, he would have been able to make use of the money so received, and that he is deprived of the benefit that he would have got from using the money if he had got it in proper time. 14 W.R. 151. G

(3) Even according to the Interest Act no objection to granting it from date of its ascertainment.

Interest on mesne profits may be awarded from the date of the ascertainment of the amount of mesne profits. 11 W.R. 25. H

(4) As a general rule interest on mesne profits is allowed from the date of suit.

Following the decision in 3 C. 654 (P.C.), interest on mesne profits will be allowed from the commencement of the suit at 6 per cent. per annum. 6 C.L.R. 357. I

(5) But interest on mesne profits anterior to date of suit only granted under special circumstance—Court's discretion.

(a) To succeed in an application for interest on mesne profits for a period anterior to the commencement of the suit, a special case must be made out. 6 C.L.R. 357. J

(b) Though, ordinarily, the practice is to make interest payable from the date on which the mesne profits are assessed, there is no rule of law by which a party is debarred from suing for the recovery of mesne profits with interest, from the date of payment, when the plaintiff had been made to pay, but which is justly due from the defendants. 17 W.R. 228. K

(c) There being no rule of law obliging the Court to allow interest on mesne profits, it is a matter for the discretion of the Court, upon consideration of the facts, whether to allow interest or not. 10 C. 785 (P.C.)=11 I.A. 88. L

(d) Where a rightful owner is kept out of possession of his land, interest may be allowed year by year during the period of his possession. 7 W.R. 173. M

G.—INTEREST ON MESNE PROFITS—(Continued).

- (e) The Court in estimating the loss of the plaintiff may consider the use he might have made of the money if he had received it at the proper time. 14 W.R. 151. **N**
- (6) **Decree for mesne profits, whether carries interest by its own force.**
- (a) Where a Court does not intend to give interest on mesne profits it should expressly say so. 4 C.W.N. 631 (P.C.) **O**
- (b) The term "mesne profits" includes interest on mesne profits, and such interest accrues from the day on which each instalment becomes due. 25 A. 275. **P**
- (c) The effect of S. 211 of the Code of Civil Procedure is to provide that a decree for mesne profits shall carry interest on them although the decree is silent about it. 4 C.W.N. 631 (P.C.) **Q**
- (d) Under a decree for mesne profits, the decree-holder is entitled to interest on such mesne profits from the time at which the profits would, if he had been in possession, have come to him. 4 C. 882. **R**
- (e) According to the practice of the Native Courts in Bombay, a sum found due for mesne profits is a judgment debt, and carries interest by its own force. On petition in the Native Court, after decree upon appeal in England, interest was awarded on the amount of mesne profits decreed, although not prayed for in the plaint, or given by the decrees in India, or the order of affirmation in England. 3 M.I.A. 220. **S**
- (f) The expression "mesne profits" includes, under S. 211 of the Civ. Pro. Code, 1882, interest on them. Therefore a simple decree for mesne profits shall carry interest on them. This can only be granted for three years from the decree or until possession within that time. 27 C. 951 (P.C.) **T**
- (g) The term "mesne profits" does not include the loss of interest year by year upon those profits which is merely damages sustained by the plaintiff in consequence of their not having been paid as they become due. 8 C. 332 (P.C.)=9 I.A. 1. **U**
- (7) **Where decree is silent—Interest on mesne profits cannot be allowed in execution.**
- (a) Where a decree is silent as to interest on mesne profits, such interest cannot be recovered in execution. 22 A. 262. **Y**
- (b) Where a decree awards mesne profits but is silent about interest, the Court executing the decree cannot award interest on mesne profits. 8 C. 258. **W**
- (c) Where the Court does not award interest on mesne profits, the Court executing the decree has no power to allow interest year by year on mesne profits. 8 C. 332 (P.C.)=9 I.A. 1. **X**
- (d) Where a decree for mesne profits does not declare whether interest on the mesne profits is or is not to be awarded, the Court executing the decree is right in refusing to award interest. 9 W.R. 369. **Y**
- (e) Where the original decree awarding mesne profits was silent on the point of interest, the Court executing the decree had no power to grant interest on mesne profits. 22 W.R. 533. **Z**
- (f) The rules governing interests on mesne profits are the same as those that govern interests on costs. In the case where interest is not awarded on costs, the proper mode was pointed out to be to apply for amendment

G.—INTEREST ON MESNE PROFITS—*(Continued).*

of the decree. Perhaps the same rule applies in the case where the decree is silent as to interest on mesne profits. See "INTERESTS ON COSTS." **A**

- (8) Decree silent as to interest on mesne profits—Court cannot grant it in execution.**

Where a decree does not give interest on mesne profits, interest cannot be awarded for a period, previous to the date of the ascertainment of mesne profits. 9 W.R. 217. **B**

- (9) Claim of interest by decree-holder in execution proceedings—Waiver of objection by judgment-debtor—Effect.**

Where, in the course of executing a decree, the decree-holders, from time to time, attached to their application an account showing that they claimed interest on the mesne profits decreed in their favour, and no objection was taken from 1870 up to 1880, the judgment-debtor could not, after the lapse of such a long period, object to the interest being allowed, and the High Court declined to interfere with the rate of interest allowed by the lower Court when the lower Court had found that to be the usual interest in that part of the country. 7 C. 620 = 9 C.L.R. 40. **C**

- (10) Liability of usufructuary mortgagee to pay interest on mesne profits to mortgagor, whom he wrongfully kept out of possession.**

Where a usufructuary mortgagee, instead of yielding up possession and taking the money deposited by the mortgagor, sets up a false claim of an absolute sale and thus forces the mortgagor into a regular suit, the mortgagor is entitled to the mesne profits for such period as may not have been barred by the statute of limitation, with interest thereon from the date of the suit. 8 W.R. 922. **D**

- (11) Interest on mesne profits—whether suit should be for land and its mesne profits.**

Where a suit for mesne profits is not a suit for land and its mesne profits, interest on such mesne profits cannot be recovered. 9 B.H.C. 7. **E**

- (12) Reversal of decree—Mesne profits.**

Where a person, dispossessed under the Lower Court's decree, succeeds in appeal and seeks restitution he may be awarded mesne profits during the period he was kept out of possession. 3 C. 720. **F**

- (13) Interest on mesne profits—mode of calculation.**

Where a person is kept out of possession of his land for many years, the aggregate of the sums due for rent and interest thereon for each year would constitute mesne profits which it was the duty of the Court to ascertain and determine. Interest upon the consolidated sum must be allowed by the decree until realization. 3 C.L.R. 517 = 4 C. 674. **G**

- (14) Interest on mesne profits—How ascertained.**

In the ascertainment of the mesne profits due to the decree-holder, he is entitled to receive interest, year by year, on the amount found to be due, and not merely to interest on the interest actually ascertained and embodied in the decree. 7 C.W.N. 437. **H**

G.—INTEREST ON MESNE PROFITS—(*Concluded*).

(15) Decree granting mesne profits being silent about interest on them—Execution—Interest.

Where a decree granting mesne profits, the amount being left for the determination of the Court executing the decree, made no provision for interest on the amount, *held*, that the decree-holder is entitled to interest upon the mesne profits due to him, until such mesne profits are actually paid. 33 C. 329. I

H.—INTEREST ON COSTS.

(1) The same rule that applies to interest on mesne profits applies also to interest on costs.

The principle of the ruling of the Full Bench reported in 6 W.R. 109, *viz.*, "we have no doubt that in executing a decree the Court, which executes it, has no power to alter or add to it" is as much applicable to interest upon costs as it is to interest upon mesne profits not awarded by the decree. 15 W.R. 415. J

(2) Thus the Court executing decree cannot award interest where decree does not grant it.

(a) The Court executing a decree has no power to award interest on costs where the decree is silent about it. 6 B.L.R. Ap. 33. K

(b) Although it seems that the practice of the Court was not uniform for some time on the matter of interest on costs, the later decisions establish that this Court has refused to allow interest upon costs in cases where the decree is silent about it. 3 C. 351 = 1 C.L.R. 158. L

(3) The same rule applies even to decrees of the P.C.

(a) Where the decree of the Privy Council has not given interest upon the costs, the Court executing that decree has no power to allow interest. W.R. (1864), Miscel. 37. See also 18 W.R. 103; 23 C. 357; 32 C. 494 = 9 C.W.N. 372; 1 P.R. 1877. M

(b) A Court executing a decree of the Privy Council cannot supplement it by adding interest to the costs, when the decree is silent about it. 16 W.R. 302. N

(c) Where the Privy Council has not awarded any interest on the costs allowed to the respondent, the Court executing the decree cannot award any. 9 C.W.N. 372 = 1 C.L.J. 118 = 32 C. 494. O

(d) Where there was no provision for the payment of interest upon costs, either in the decree of the Sudder Court, or in that of the Privy Council, the Court executing the decree could not award interest on such costs. 15 W.R. 335. P

(e) The order of the Privy Council provided for costs only, without any mention of interest on costs. The High Court, in executing the decree of the Privy Council, declined to allow interest on costs. 21 W.R. 147. Q

(f) A subordinate Court executing an order of the Privy Council, which is silent as to interest on costs, has no power to direct payment of those costs with interest. This is in accordance with the principle of the decisions of the Courts in India on S. 11 of Act XXIII of 1861. 3 C. 161 (P.C.) = 4 I.A. 137. R

H.—INTEREST ON COSTS—(*Continued*).

(4) The proper procedure—Application for amendment of decree.

(a) The proper procedure in such cases is to apply to the Court which passed the decree to amend the decree by adding the interest on costs. 6 B.L.R. Ap. 33. See 15 All. 121 (*contra*). **S**

(b) Interest which was not awarded by the judgment cannot subsequently be given by amending the decree, under S. 206 of the Code of Civil Procedure. 15 A. 121. But see also 6 B.L.R. App. 33. **T**

(5) Some old decisions to the contrary.

(a) As a general rule, unless it is distinctly stated in the decree that no interest is to be given on the costs, the Court ought to award them. 18 W.R. 34. But see 6 B.L.R. App. 33, 16 W.R. 362, 3 C. 351, etc., noted above. **U**

(b) Costs carry interest with them whether decree awards it or not. 2 W.R. Miscellaneous 21. **Y**

(6) Power of Executing Court to award interest where decree awards it, but is silent as to the rate.

See 7 B.L.R. Ap. 30, noted under "INTEREST ON DECRETAL AMOUNT."

(7) Interest on costs may not exceed six per cent.—S. 222, C.P.C.

Interest on costs may not exceed six per cent., under S. 222 of the Civ. Pro. Code. L.B.R. (1893-1900), 332. **W**

(8) Costs, whether include costs of translating and transmitting—Interest.

(a) An order of the Privy Council, that the appellant should recover from the respondents the cost of the proceedings in the Courts below, has reference to the costs incurred in this country, which would include the costs for translating and printing, and such costs should carry interest at 6 per cent. per annum. 21 W.R. 411. **X**

(b) The order of the Privy Council was in these terms "The decree of the High Court of Judicature at Fort William in Bengal of 28th November of 1865 be, and the same is hereby, reversed with £276-12-2 costs, and that the judgment of Zillah Court of Bhaugulpore of the 9th February, 1865, be affirmed with costs in the Courts below." *Held*, that the words "costs in the Courts below" included the costs of the High Court, and therefore included the costs of translation and printing. Interest should be allowed on this as the decree of the Zillah Court which was affirmed by the Privy Council allowed interest on costs. But the costs of the Privy Council were not to bear interest. 18 W.R. 253 = 9 B.L.R. Ap. 22. **Y**

(c) When the Privy Council not only decrees a certain specified sum as the costs of appeal to the Privy Council, but also awards the costs incurred in the Courts in India, the decree-holder is entitled to the costs for translating in the High Court the record of the appeal to the Privy Council, and for transmitting it to England. 23 W.R. 163. **Z**

(d) Where a decree of the Privy Council reversed the decree of three Courts in India with costs in each Court, and dismissed the suit with costs, specifying a certain sum as costs of the appeal to Privy Council, *held* that costs did not include the costs of translation, etc., incurred in the High Court, and, as no interest was provided for in the decree of the Privy Council, it could not be allowed by the High Court. 15 W.R. 356 = 9 B.L.R.A.P. 23. **A**

H.—INTEREST ON COSTS.—(*Concluded.*)

(9) Privy Council decree—Meaning of “costs”—Interest on costs.

Where a decree of the Privy Council ran thus “that the decree of the High Court, etc., etc., be and the same is reversed with costs,” the High Court held the word ‘costs’ in the decree means the costs of the High Court of Bengal, as the costs of the Privy Council had been already awarded specifically. But the word did not include interest upon costs. 21 W.R. 195. **B**

(10) Reversal of decree by the appellate Court—Refund of costs with interest.

- (a) A successful appellant who had paid the costs in the lower Court is entitled to a refund of the costs with interest thereon at 6 *per cent.* 8 C. 262. **C**
- (b) In reversing a decree of the Supreme Court at Calcutta, the Judicial Committee directed that interest, at the usual rate allowed by the Court, should be allowed. 6 M.I.A. 1. **D**
- (c) Interest is awardable on costs refunded on the reversal of a decree in which costs were recovered. 20 W.R. 49. **E**
- (d) The Court has power to award, to a successful appellant, interest on a sum ordered to be repaid by way of restitution under a decree passed in an appeal. 9 M. 506. See also 15 W.R. 74, 2 C.L.R. 354. **F**
- (e) Where a defendant who is obliged to pay to the plaintiff according to the decree of the lower Court, the costs with interest thereon he is entitled to the refund of the sum with interest, on the appeal to the High Court being decided in his favour. 8 A. 262. **G**

I.—INTEREST—UNCONSCIONABLE RATE.

(1) Exorbitant interest, no ground for relief by itself.

- (a) Where a bond stipulated for the payment of compound interest on the amount advanced at the rate of Rs. 5 per mensem with monthly rests, held, that the defendant was bound to give interest at that rate there being no equitable ground to alter the bargain. 7 C.W.N. 876. **H**
- (b) Where the persons who contracted the loan are *sui juris*, and there is no proof of unfair dealing, the Court will not interfere with the contract of the parties on the ground that the rate of interest is very high. 31 C. 233. **I**
- (c) Indian Courts have no discretionary power to interfere with the contract of parties, merely on the ground that a bargain is hard and unconscionable. 96 P.R. 1901=151 P.L.R. 1901. **J**
- (d) In the absence of any plea or evidence, that the borrower was in the clutches of an extortionate money lender, the mere fact that the rate of interest is very high is insufficient to raise a presumption of undue influence. 96 P.R. 1901=151 P.L.R. 1901. **K**
- (e) From the mere circumstance that a man has made a bad bargain, it does not follow that this was due to abuse of confidence or authority. In such a case interest at the stipulated rate will be allowed. 32 P.R. 1890. **L**
- (f) A Judge will not be justified in refusing to award the stipulated interest on the sole ground of the interest being extortionate. D. C. R. Part II, 6. **M**

I.—INTEREST—UNCONSCIONABLE RATE—(*Continued*).

- (g) Where some agriculturists borrowed money at 24 per cent. per annum from the plaintiff, and had the bond registered before the Tahsildar of the locality, *held*, that, in the absence of proof of undue influence, the plaintiff is entitled to the contract rate of interest. 145 P.R. 1879. **N**
- (h) A person borrowed Rs. 50 on a mortgage of his house the rent being the interest. On the same day the debtor took a lease of the house from the creditor for a rent of Rs. 1-8 per mensem, thus making 36 per cent. per annum on the amount borrowed. *Held*, that there was nothing immoral in the agreement. 40 P.R. 1882. **O**
- (i) Eighteen per cent. is not in itself an exorbitant rate of interest in the Central Provinces. 6 C.P.L.R. 11. **P**
- (2) **Mere necessity for money raises no presumption of unfair advantage.**
The mere fact that a person is in urgent need of money is not, in itself, sufficient to raise the presumption that the person to whom he applies for the loan will take unfair advantage of his necessity. 31 C. 233. **Q**
- (3) **Relief is granted against mistake or undue influence and against unconscionable bargains.**
- (a) Exorbitant rate of interest may be refused on the ground, either of undue influence, or, that the relation of parties is such as leads to a strong inference that one was misled or did not understand the nature of the transaction. 135 P.R. 1889. **R**
- (b) Where it was found that the creditor, a village money lender, and the debtor, a zemindar, had dealings for a considerable time previous to the execution of the bond on which the suit was based, and of the amount claimed about $\frac{1}{4}$ represented the principal and the remaining $\frac{3}{4}$ the interest, *held*, that a Court will be justified in treating the bond as void, on the ground of undue influence and awarding the plaintiff only the amount equitably due. 110 P.R. 1879. **S**
- (c) A mortgage-deed provided for the re-payment of the debt by annual instalments with interest at 6 per cent. per annum. There was a further provision for the payment of the whole debt with interest at the increased rate of 24 per cent., from the date of the bond, in case of failure to pay the instalments regularly. The mortgagor paid all the instalments except the last. The mortgagee claimed, on default, the unpaid instalment and interest at 24 per cent., from the date of the bond on the original sum due; *held* that to allow such a claim would be unjust and inequitable. 3 C.P.L.R. 48. **T**
- (d) Where the defendant, being pressed for money, borrowed from a money-lender at the high rate of 75 per cent., compound interest, *held*, that the contract was an inequitable and an unconscionable one, and that the Court should grant equitable relief. 2 C.P.L.R. 23. **U**
- (e) A contract to pay interest at the rate of 75 per cent. for arrears of rent payable for land, for which arrears the landlord has good security in the holding and on which the arrears are the first charge, and which he can recover in other ways, is an unconscionable one, and will not be enforced. 33 C. 683 = 3 C.L.J. 391. **Y**
- (f) Where the borrower is a *pardanashin* lady, the lender her own mukhtear, under the cloak of a benamidar, and the security is an ample one, the Court may grant, in such a case, equitable relief against exorbitant and excessive rate of interest. 12 C. 225 = 12 I.A. 215 (P.C.). **W**

I.—INTEREST—UNCONSCIONABLE RATE—(Continued).

(4) Unreasonable delay in bringing suit, sometimes ground for inferring the transaction to be unconscionable.

(a) Where the plaintiff lent money to the defendant, who was placed under the pressing necessity of paying Government Revenue, at a high rate of compound interest, notwithstanding that ample security by way of mortgage with power of sale was given, *held*, taking into consideration the fact that the creditor had wilfully allowed the debt to remain unsatisfied in order that interest might accumulate, that the bargain was hard and unconscionable and that compound interest should not be allowed. 9 A. 228. **X**

(b) A claim having been unreasonably delayed, no interest was allowed. Old S. C. 105. **Y**

(c) Where a bond specified a time for payment, which time was allowed to be passed by for 5 years, without any payment or a fresh acknowledgment, it was held that interest could not be allowed. Old S.C. 58. **Z**

(5) But mere delay cannot be construed as unconscionable, though interest is thereby increased.

(a) There is no authority for the principle, that a bargain which, in itself, is not open to objection as hard and unconscionable, can be held to have assumed that character, in consequence of the delay on the part of the creditor in suing on the bond and of the accumulation of interest as a result of it. 31 C. 233. **A**

(b) That the decree-holder had delayed in taking out execution is no ground, for relieving the judgment-debtor from paying interest at the rate directed by the decree, from the date of decree until realization. 3 C.L.R. 523. **B**

(c) A creditor is not bound to bring his action to suit the convenience of his debtor, and, in a case where two persons are jointly and severally liable to him on a bond, as principal and surety, may postpone bringing the suit to the last day allowed by law, and he is not entitled to a less sum for interest if he does so. 12 W.R. 192. **C**

(6) Where stipulated interest is high, post diem interest must be refused or reduced.

In a suit against an agriculturist on a bond which stipulated for interest at the rate of Rs. 2-8-0 *per cent. per mensem*, but did not contain an express provision for interest after one year, it was held, taking into consideration that the defendant was an agriculturist, that after the first year one *per cent. per mensem* would be a reasonable rate of interest. 42 P.R. 1872. See also cases noted under "INTEREST, POST DIEM." **D**

(7) Suspension of law and right owing to a rebellion—Interest whether claimable.

Where interest on an amount borrowed was not paid owing to a rebellion in which law and right was suspended, the Court did not allow the interest due to that period. Old S.C. 1. **E**

(8) Mortgage-deed—Stipulation for payment of rice on default of payment on due date, whether enforceable.

A stipulation, in a mortgage-deed, for the payment of a certain measure of rice for each rupee of the mortgage money, on default of the payment of the amount, by a certain day, was held to be unreasonable, and, as such, not enforceable in equity. 1 M.H.C. 81. **F**

I.—INTEREST—UNCONSCIONABLE RATE—(*Concluded*).

(9) Where increased rate is disallowed, a reasonable increase may be granted.—

Without discussing whether the enhanced rate of interest, payable on a mortgage deed, in default of payment of the interest and principal on the date fixed for payment of each of them, was a penalty or not, the Court considered an increase by one per cent. in the rate of interest, on breach of the contract, was a reasonable compensation. 155 P.L.R. 1901. G

(10) Father's debt bearing an usurious rate of interest—Son's liability to discharge it.

An usurious rate of interest cannot be treated as a circumstance for showing that the decree against a Hindu father for debt was such that the son was not bound to discharge. 2 C. 213. H

J.—INTEREST AMOUNTING TO PENALTY.

(1) What is penalty; and how is relief granted against penalty—Contract Act, S. 74.

- (a) Where a creditor desires punctual payment, and seeks to ensure it by stipulating that, if the money is not paid on a certain date, a certain larger sum shall become due, and that he shall be entitled to claim that sum afterwards, such stipulation is viewed as a penalty. I

If default in punctual payment occurs, a Court of equity will relieve the debtor from payment of the whole penalty, if it be shown that the loss which the delay in payment caused to the creditor will be compensated by a less sum. 20 W.R. 257. J

- (b) Where the object of the parties is merely to secure punctual payment, a stipulation for an increased rate of interest on default should be deemed a provision by way of penalty and should be relieved against. 6 B.H.C.R. 7 and 8 (9) A. C. K

- (c) If a man agrees to take a certain rate of interest for his money but stipulates for a higher rate if the contract is broken, the higher rate of interest is a penalty, and will be redeemed in all cases in which a penalty may be reduced. 20 W.R. 317=12 B.L.R. 451. L

- (d) Where a Court considers a stipulation for interest as a penalty, it is the duty of the Court to consider what amount of money will properly measure the damages, consequent on the default which the penalty is intended to prevent. 20 W.R. 223. M

- (e) Where a smaller sum is secured by a larger sum, that larger sum may be looked upon as a penalty. Thus, where a sum of money was lent at the rate of one *per cent. per mensem*, and there was a stipulation that, if a certain number of instalments were not paid, the whole amount would be considered to have lapsed, and that the loan should bear interest at 10 *per cent. per mensem*, it was held that such stipulation amounted to a penalty. 4 B.L.R. Ap. 92=14 W.R. 437 (Note). See also 19 W.R. 271=11 B.L.R. 135. N

- f) Where the higher rate of interest is payable in pursuance of the contract and not on breach, the provision for interest will not be a penalty. 150 P.R. 1883 (F.B.) O

J.—INTEREST AMOUNTING TO PENALTY—(Continued).

- (g) The obligors of a bond were held to be bound to pay the contract rate of interest, the liability to pay it not having been made contingent on any breach of any part of the contract, and the rate not being so exorbitant as to justify the Court in reducing it. 6 A. 64. **P**
- (h) The obligor of a bond is bound to pay the contract rate of interest, however high that rate may be, if there is no question of penalty; that is to say, of a liability to damages for breach of the terms of the contract in the sense of S. 74 of the Indian Contract Act. 6 A. 63. **Q**
- (i) S. 74 of the Contract Act applies to the whole money claimed at the increased rate of interest from the date of the bond until realization, and not merely to the amount claimed at that rate from the date of the bond to the date of default. 19 C. 392. **R**
- (j) S. 74 of the Contract Act can be made to apply to contracts relating to the payment of enhanced interest on failure to pay either interest or principal on the date fixed. 8 C.P.L.R. 54. **S**
- (k) The amount due under a bond was payable without interest on a certain date, and failing repayment on the due date, interest at 5 *per cent. per mensem* was to be paid from the date of the bond. *Held*, that S. 74 of the Contract Act was applicable to the case and only reasonable compensation would be awarded. U.B.R. (1892-1896), 300. **T**

(2) Whether stipulation for interest amounts to penalty, question of fact.

- (a) It is open to a Court to consider the facts and circumstances of each case and determine whether a stipulation for a high rate of interest is or is not a penalty, its finding on the question being rather a finding of fact than of law. 10 C.W.N. 1020. (But see 51 P.R. 1879). **U**
- (b) Whether a stipulation in a bond for an enhanced rate of interest from the date of default is a penalty or not is rather a question of fact than one of law, and the Court may consider whether, under the circumstances of the case, the defendant is entitled to relief. 3 C.W.N. 175 = 26 C. 300. **Y**
- (c) A condition in a bond, that, in default of payment of interest on the dates fixed, interest would be charged at a higher rate, and would be calculated at compound rate, need not necessarily be a penalty. It is a question of fact, depending, not merely on the form of the instrument, but also on the substance of the transaction. 14 C.P.L.R. 49. **W**
- (d) The question whether an agreement to pay compound interest is a stipulation by way of penalty or not, is one of fact, and not of law. 1 N.L.R. 9. **X**
- (e) The question whether the provision as to a higher rate of interest is to be treated as liquidated damages or as a penalty is a question of law to be decided on a consideration of the whole instrument in each case. 51 P.R. 1879. **Y**

(3) Intention of parties, main test in deciding whether the interest amounts to penalty.

- (a) The question as to whether "interest", as expressed in a document, is to be regarded as interest or as penalty should be decided according as the intention of the parties can be gathered from the document as a whole. 11 B.L.R. 135. **Z**

J.—INTEREST AMOUNTING TO PENALTY—(*Continued*).

(b) Stipulations in contracts substituting in a given state of circumstances a higher for a lower rate of interest cannot always be treated as penalties, but must be interpreted as other parts of a written contract should be interpreted, according to the express intention of the parties. 15 A. 232. **A**

(c) The question whether a stipulation is a penalty or not depends on whether the stipulation was intended merely as a provision to secure performance or to be carried out as part of the contract. If the former, it should be relieved against. 1 N.L.R. 9. **B**

(d) A bond stipulated for payment of the principal amount on a certain date with interest at 12 *per cent. per annum*, and, also provided, that, in default of payment on the stipulated date, the interest should be at an enhanced rate. *Held* that the stipulation was not in the nature of penalty and should be enforced, as there was no evidence to show that the executant of the bond did not understand or intend what he said. 17 M. 62=4 M.L.J. 17. **C**

(e) In an agreement to supply a certain quantity of a certain article, the defendant received Rs. 100 in advance, and agreed that, in default, he would pay interest at 1 *per cent. per mensem* and compensate for the loss of profits at a certain rate. *Held*, that the clear intention of the parties was to receive on the one side and pay on the other the sum secured in case of breach, and, that, at all events, as there was an entire breach, the sum stipulated should be awarded. 2 M.H.C. 451. **D**

(f) Where, under the terms of an ekrar, the borrower, as security for the re-payment of the loan with interest, was to execute an ijara for a term of years, a portion of the profit to be enjoyed in lieu of interest, *held*, that an agreement to re-pay the amount with interest at 75 per cent. on failure to give the ijara was not a penalty, but was only an estimated damages for breach of contract. 21 W.R. 852 on appeal from 20 W.R. 317. **E**

(4) The stipulation may amount to penalty though the word used is interest.

A contract provided for the repayment of the loan within four days, with an undertaking to pay interest at the rate of one rupee *per diem* on default. *Held*, that, looking at the entire instrument, the parties intended, when they spoke of interest, a penalty for each day's default in payment of the principal sum, and that a reasonable amount would be awarded. 3 A. 260 (F.B.). **F**

(5) Agreement to pay double rate of interest, whether penalty.

(a) A solenamah provided for the payment of six *per cent.* interest upon the money payable under it, but, under certain circumstances, the rate was to be doubled. Their Lordships of the Privy Council held that the payment of a double rate of interest was not in the nature of penalty. The solenamah was an agreement fixing the rate of interest, which was to be at the rate of 6 *per cent.*, under certain circumstances, and 12 *per cent.* under others. 10 C. 305 (P.C.)=13 C.L.R. 392=10 I.A. 162. **G**

(b) A stipulation to pay a double rate of interest, on default in payment of the amount due under a bond within two years, from the date of such default is not in the nature of penalty, but of liquidated damages. 25 P.B. 1879. **H**

J.—INTEREST AMOUNTING TO PENALTY—(Continued).

(c) *Held* that a stipulation in a decree for the payment of a double rate of interest on certain contingencies was a reasonable substitution of a higher rate of interest for a lower one in a given state of circumstances, and were not in the nature of a penalty against which equitable relief might be claimed. 13 C.L.R. 418=10 C. 305=10 I.A. 162 (P.C.). I

(d) A stipulation to pay interest at a rate twice as much as the original one, in case the amount due on the bond was not paid on a certain date, was not so extortionate or exorbitant as to entitle the defendant to an equitable relief. 2 A.W.N. 95. J

(6) Stipulation to pay double the amount of debt on default of payment of one instalment—Penalty.

A stipulation in a bond, by which, on default of payment of one instalment, double the entire amount of the debt was to become at once payable, was held to be in the nature of penalty. But the mere acceleration of payment of the debt would not have that effect. 12 B. 555; U.B.R. (1892-96), 290. K

(7) Exorbitant rate of interest, whether penalty.

(a) It has been the uniform practice of the Allahabad High Court, as in numerous instances in the Calcutta and Bombay Courts, to give relief against exorbitant interest, as being in the nature of penalty. 4 A. 8. L

(b) Where a promissory note provided for the re-payment of the amount with interest on a certain date, and, in default, interest should run at 75 per cent. per annum. *Held*, that the increased rate of interest was a penalty, and that it was to be relieved against by awarding the plaintiff interest at the rate of 9 per cent. per annum. 10 B.H.C. 382. M

(c) A bond stipulated for payment of interest at the increased rate of 37½ per cent., if the original interest at the rate of 9 per cent., were not paid at the end of each year. *Held*, that the terms of the bond, with regard to the increased rate of interest payable on default, was in the nature of penalty and so excessive that a Court of equity would not enforce it. 3 A. 440. N

(8) Compound interest generally not penal.

(a) A covenant in a bond to pay compound interest is not a penalty, but a matter of contract, and the Court should award, in enforcing the contract, the compound interest. 25 W.R. 323. O

(b) A stipulation for compound interest, if interest was not paid every year, was held not to be of the nature of penalty. 7 A.W.N. 78. P

(c) The Courts do not lean towards compound interest, and they do not award it in the absence of a stipulation; but where there is a clear agreement for its payment, it is, in the absence of any disentitling circumstances, allowed. 28 B. 371 (377). Q

(d) A stipulation for the payment of compound interest upon the failure of a mortgagor to pay interest annually cannot be held to be a penalty, and such interest, the creditor is entitled to recover. 1 A.L.J. 224. R

(e) A stipulation that compound interest shall be paid on interest not paid up is not a penalty. 6 C.P.L.R. 11. S

(9) Compound interest at the same rate as simple interest not penal.

(a) A stipulation for compound interest at the same rate as was payable upon the principal, is not one by way of penalty, there being no "increased interest" within the meaning of the explanation to S. 74, Contract Act. 25 A. 159 (161). T

J.—INTEREST AMOUNTING TO PENALTY.—(*Continued*).

- (b) A stipulation in a bond for payment of compound interest, on failure to pay simple interest, is not a penalty within the meaning of S. 74, Contract Act. A.W.N. (1902), 178; 2 A. 639, *contra* in 5 C.P.L.R. 108. **U**
- (c) A stipulation in a mortgage-deed for payment of half-yearly instalments of interest, and, in case of default, for compound interest at the same rate, was held to be valid, as there was nothing to prove fraud or oppression, improper dealing, exorbitant amount, dealing with an ignorant person, or the like consideration. 20 C. 360. **Y**
- (d) Stipulation in a bond as to the annual capitalisation of principal and interest, for the purpose of carrying interest is one, by which the obligor is to be bound and which could not be relieved against. 6 A. 61 (68)= 3 A.W.N. 208, 7 A.W.N. 78. **W**
- (e) The mere charge of compound interest, at a reasonable rate, when the rate charged upon the interest is not in excess of the rate charged upon the original principal, is not in itself a penal condition. 58 P.R. 1904 (following 25 A. 26, 25 A. 159 (161) and 29 C. 51). **X**
- (f) A stipulation in a bond that the interest on the principal sum shall be paid six-monthly, and, if not paid, shall be added to the principal and bear interest at the same rate is not one of a penal nature. 2 A. 621. **Y**

(10) **Compound interest at higher rate, payable from date of bond—Penalty.**

But a stipulation for interest, at a certain rate, up to the due date, and for compound interest at a rate higher than the fixed one, as payable from the date of the bond, on failure to pay on the due date, amounts to a penalty. 29 C. 43, 1 A.W.N. 171, 22 C. 143, 26 M. 111. **Z**

(11) **Compound interest and increased rate of simple interest whether penal.**

- (a) A condition that, upon failure by the borrower to pay the interest when due, both compound interest and an increased rate shall be payable, amounts to a penalty. 6 A.W.N. 48=8 A. 185. But see 10 M. 203, *infra*. **A**
- (b) For, if a lender stipulated for both kinds of damages, *viz.*, compound interest and also interest at an increased rate, that cannot be a fair agreement with reference to the loss sustained by him, as the two together amount to more than an indemnity against loss, and so must be a penalty. 8 A. 185 (188)=6 A.W.N. 48. **B**
- (c) But in Madras, a stipulation, in a bond fixing a high rate of interest in the first instance to be paid upon the money lent, to the effect that compound interest, together with increased interest should become payable on default of punctual payment, would not necessarily amount to penalty. 10 M. 203. **C**
- (d) A Court should not interfere to protect persons who, with their eyes open, choose knowingly to enter into even somewhat extortionate bargains; and it is only when a person has entered into such a bargain, in ignorance of the unfair nature of the transaction, advantage having been taken of youth, ignorance or credulity, that a Court of equity is justified in interfering. 10 M. 203 (204). **D**
- (e) A provision for compound interest and an increased rate of interest, in case the amount due on a bond was not paid on the day fixed, was held to be in the nature of penalty. 51 P.R. 1879. **E**

J.—INTEREST AMOUNTING TO PENALTY.—(Continued).

(12) **Compound interest on failure to pay higher rate of simple interest.**

Stipulation for payment of simple interest at a higher rate, on default of payment on the due date in a bond, with the provision for payment of compound interest, on failure to pay the higher interest, was treated by the Court as having been intended as a penalty. 6 N.W.P. 358. F

(13) **Compound interest at high rate with monthly rests.**

A bond bearing compound interest at a high rate per mensem with monthly rests, was held to be a proper case for giving relief to the debtor and allowing only simple interest at the rates stipulated for. 25 A. 284. G

(14) **Compound interest in Santhal Parganas.**

There is no law or regulation laying down that an agreement between any two persons living in the Santhal Parganas to pay compound interest upon the amount borrowed is unlawful within the meaning of S. 23 of the Contract Act. All that the law provides is that compound interest will not be decreed by any Court. Illustration to S. 24 of Reg. V of 1893 shows clearly that a contract of this character may be so treated as to allow the obligee such sums of money as in law he is entitled to recover, notwithstanding that part of the consideration is compound interest. 26 C. 238. H

(15) **Stipulation for higher rate of interest from date of bond on default generally amounts to penalty.**

(a) A stipulation as to the payment of a higher rate of interest from the date of the bond, if the debt due on the bond is not paid on the stipulated date, is a penalty and cannot be enforced. 1 A.L.J. 224. But see 11 B.L.R. 138 (note), 17 M. 62, 17 W.R. 378. I

(b) A provision in a bond to the effect that the amount due with interest should be paid on a certain date and on failure thereof interest should be paid at an increased rate from the date of the bond up to the date of realization amounts to a penalty. 19 C. 392, *overruling* 14 C. 248 and following 9 C. 689. J

(c) A proviso for retrospective enhancement of interest, in default of payment of the interest at due date, should be relieved against. 17 B. 106 (F.B.) K

(d) A stipulation for retrospective enhancement of interest is generally a penalty which has to be dealt with by the Court under S. 74 of the Contract Act. 4 M.L.J. 257. L

(e) In cases in which a stipulation for enhancement of interest is retrospective, there is always the possibility of reducing the amount to a sum named as the amount payable in case of breach, and S. 74 of the Contract Act must be applicable. 53 P.L.R. 1904. M

(f) Where the stipulation is that, on default, the higher rate shall be payable from the date of the original obligation, the debtor does, on default, become immediately liable to pay a larger sum, *vis.*, the difference between the enhanced rate and the original rate of interest already due. Such a stipulation, therefore, amounts to a penalty. 12 M. 161. N

(g) A stipulation for a higher rate of interest, from the date of the execution of the bond, if the amount of the bond was not paid with interest, at a certain rate, within a given time, was held to be a penalty and not to be enforceable in a Court of Equity. 22 W.R. 474. O

J.—INTEREST AMOUNTING TO PENALTY.—(Continued).

(h) A stipulation in a mortgage bond payable by instalments, for payment of interest from the date of the execution of the bond in case of a default being made in the payment of the instalments, was held to be a penalty. 39 P.R. 1899. P

(i) A stipulation, in a mortgage bond, for the payment of interest at 2 *per cent. per mensem*, from the date of the bond, in case of default in payment of the principal amount with interest at the rate of 1 *per cent.* on a certain day, was regarded as a penal one. 9 C. 615. Q

(j) It was held, on a consideration of the terms of the bond sued on, that the higher rate of interest stipulated for in case of default of payment was meant to apply from the date of the loan, and therefore it was a penalty which could not be enforced. 2 C.W.N. 234. R

(k) A stipulation for the payment of interest at the rate of 75 *per cent. per annum* from the date of the bond, on failure to pay the principal amount in two instalments on the dates fixed in the bond, was held, in the circumstances of the case, to be a penalty. 10 C.W.N. 1020. S

(l) A stipulation in a mortgage bond, that, in case of default of payment of the principal on a certain date, the interest, which was only 8½ *per cent.* in case of non-default, should be calculated at the rate of 37 *per cent.* from the date of the bond was held to be a penalty. 14 B. 274. T

(m) Where a registered mortgage bond bore interest at the rate of Re. 1-4-0 *per cent. per mensem*, and there was a stipulation in the bond for the payment of the whole interest for the year on the last day of each year from the date of the bond, and on default of such payment, interest on such arrears of interest and upon the principal sum was to be at the rate of Rs. 3-2-0 *per cent. per mensem, held*, that the mortgagee was not entitled to the higher rate of interest, it being in the nature of a penalty, within the meaning of S. 74 of the Contract Act. 22 C. 143. U

(16) In such a case only reasonable compensation is to be allowed.

(a) Where a bond stipulated for an increased rate of interest, in default of payment of the amount in 15 days, payable from the date of the bond, *held*, that such a stipulation was of a penal character and the creditor was entitled only to reasonable compensation for his loss. Interest at the Court rate, (12 *per cent.*), was allowed. 6 M. 167. V

(b) The plaintiff sued to recover interest at the rate of 2 *per cent. per mensem*, from the date of the bond which was the rate stipulated in case of default, instead of at the rate of 1 *per cent. per mensem*, the rate stipulated in the case of the instalments being duly and regularly paid. *Held* that such a stipulation was in the nature of penalty and only reasonable compensation would be allowed. 8 C.P.L.R. 77. W

(c) Where there is a stipulation in a bond for the payment of interest at a higher rate on breach of a certain condition, from the date when the advance was made, the Court will be justified in regarding it as a stipulation for compensation and in proceeding to exercise its discretion in determining what, under the circumstances, would be a sufficient compensation. 3 M. 224. X

J.—INTEREST AMOUNTING TO PENALTY—(Continued).

- (17) But Court may consider the stipulation as the standard on which reasonable compensation is to be based.

A stipulation, that, if the whole mortgage debt was not paid on a certain date, one *per cent. per mensem*, should be charged as interest, not from the date of the breach of the contract, but from the date of the bond, was held to be in the nature of a penalty and only to be taken into consideration as a basis upon which damages for breach of contract were to be estimated. 18 C. 164. Y

- (18) The higher rate is awarded if creditor has suffered loss and is entitled to such damages.

A stipulation for a higher rate of interest on failure to pay strictly in accordance with the agreement is of the nature of penalty, and a Court need only award the higher interest, if it considers the creditor has incurred loss and is entitled to damages. 6 C.P.L.R. 7. Z

- (19) Increased rate of interest from the date of default generally not penal.

(a) Under the Contract Act, 1872, a stipulation for an increased rate of interest from the date of default is a stipulation by way of penalty. The explanation to the Contract Act Amendment Act of 1899 says that such stipulation may be a penalty, but does not preclude a Court from holding otherwise. 25 M. 343 = 11 M.L.J. 421. A

(b) All the High Courts are agreed in holding that, if a contract is to pay a higher rate of interest from the date of breach, its operation is prospective, and the proper construction is that the debtor who commits default intends to pay the alternative rate or to return the money lent. 18 M. 175. B

(c) By cases in this country it is well established that an agreement to pay a sum of money on a given date with interest at a certain rate, with a stipulation that, in default, the debtor shall thenceforward pay a higher rate of interest is strictly enforceable. 12 M. 161. C

(d) A provision in a mortgage bond that, if the loan was not repaid with interest thereon at Rs. 2 per month on the stipulated day, interest at Rs. 3 per month should be paid from the date of default, was held not to be a penalty and therefore could be enforced. 14 B. 200. D

(e) Where a bond stipulated for the payment of the principal with interest thereon at one *per cent. per mensem*, within six months, and that, in default, the rate of interest should be raised to 6½ *per cent.*, held that the higher rate of interest was not a penalty, and that the plaintiff was entitled to interest at that rate. 2 M.H.C. 205. E

(f) A proviso for enhanced interest in the future, in default of payment of the interest at due date, cannot be considered as a penalty, unless the enhanced rate be such as to lead to the conclusion that it could not have been intended to be part of the primary contract between the parties. 17 B. 106 (F.B.) F

(g) Where interest for six months on money lent was paid in advance at the rate of 8 *per cent. per month*, and on default further interest was made payable at the same rate from the date of default, held such interest was not a penalty, merely because the interest was high. 96 P.R. 1901 = 151 P.L.R. 1901. G

J.—INTEREST AMOUNTING TO PENALTY.—(*Concluded*).(20) **But increased rate of interest from date of default may be penal under certain circumstances.**

(a) *Per Rampini, J.*—A stipulation for an enhanced rate of interest running from the date of default is not to be considered as a penalty except in special circumstances, where the enhanced rate is exorbitant, the stipulation may be a penalty, but it is not necessarily so. 3 C.W.N. 175 = 26 C. 300. **H**

(b) Where the increased rate of interest to be paid after the date of default is very high, and there is also evidence to show that the stipulation is inserted to ensure prompt payment by the debtor, the increased rate of interest may be a penalty and equitable relief may be granted. 7 C.W.N. 152. **I**

(c) An agreement to pay an enhanced rate of interest, in case of default in payment of the amount due on a bond on the due date, from the date of such default, was held to be in the nature of penalty. 3 O.C. 168. (S. C. 168, *not followed*.)

(21) **Instalment bond—Stipulation for a higher rate of interest from the date of default—not a penalty.**

An agreement in a bond to repay the loan by instalments, with a condition, that, on failure to pay any one instalment, the principal sum due on date of default should be forthwith payable with a higher rate of interest from the date of default, is not an agreement which will be relieved against. 9 M. 276. **K**

(22) **Court's power to grant relief independently of the Contract Act, S. 74.**

A Court is not precluded from affording relief to a debtor independently of S. 74 of the Contract Act even in the case when the bond provides for an increased rate of interest in case of default prospectively and not retrospectively, where a proper ground for such equitable relief is made out. 3 C.W.N. 175 = 26 C. 300. **L**

(23) **Reduction in the rate of interest on certain condition—Original rate on default—not a penalty.**

A sum of money was borrowed at a certain rate of interest. Subsequently, on settling the accounts, the creditor agreed for a lower rate, if the account found due was paid on a certain date; if not so paid, the rate originally contracted for would be payable. *Held*, that such a stipulation cannot be regarded as penalty, the effect of the stipulation being simply to restore the original rate. 10 C.W.N. 640. **M**

(24) **Where there is doubt whether increased rate is to take effect from date of bond or date of default.**

It was not clear from the bond whether the higher rate of 75 *per cent.* was to run from the date of the bond, or from the date of default; but the Court considered that it was safer to hold that the former was the case, and consequently, that the stipulation to pay this higher rate of interest was a penalty. 2 C.W.N. 333. **N**

K.—INTEREST ON ARREARS OF RENT.

(1) Default in payment of rent—Right to interest.

- (a) Where rents are withheld, a defaulter renders himself liable to pay interest, whether the pattah provides for interest or not. 2 W.R. (Act X), 68. **O**
- (b) A stipulation for payment of interest, upon arrears of rent, is an ordinary incident of a tenancy in this country, unless there is something unusual in the stipulation, and, as a rule, it attaches to the tenancy, so that the purchaser of the tenancy will also be bound by the stipulation. 7 C.W.N. 203. **P**
- (c) A stipulation for payment of interest upon arrears of rent is an ordinary incident of a tenancy in this country; unless there is something unusual in the stipulation, as a rule, it would attach to the tenancy, not only so long as it remains in the possession of the tenant, who enters into the stipulation, but would continue to attach to it, notwithstanding a sale for arrears of rent. But, if there is anything unusual in the stipulation, it would not be an ordinary incident of a tenancy, and would not continue to be attached to the tenancy, after a sale for arrears of rent. 26 C. 315=3 C.W.N. 194. **Q**

(2) Arrears of rent—Interest—Discretion of Court.

- (a) The Court has the discretion to allow interest on arrears of rent. 6 B.L.R. Ap. 119. **R**
- (b) Though interest may be awarded on arrears of rent, the Court ought not to make interest run upon instalments of rent, as from dates during the currency of the year, at which *kists* are usually paid, unless there is an agreement to that effect. 9 W.R. 495. **S**

(3) Omission to claim interest on arrears of rent in the past, whether waiver.

The mere omission to claim interest for the past years from a tenant, at the stipulated rate, cannot amount to a waiver of the landlord's right at that rate. 26 C. 160. **T**

(4) Claim for contribution—Delay in demand—Interest.

Where a claimant for contribution slept over his rights for five years before making his demand for contribution, it was held that the Lower Court had exercised its discretion properly in withholding interest. 19 W.R. 98=10 B.L.R. 352. **U**

(5) Under-proprietors, interest on arrears of rent from.

- (a) The arrears of rent due from under-proprietors do not carry interest. 3 C.W.N. 218. **V**
- (b) Arrears of rent, due from an under-proprietor, cannot be made to carry interest, as they are not tenants within the meaning of S. 14 of the Oudh Rent Act, 1886, and there is no other law by which such arrears could carry interest. 2 O.C. 288 (P.C.)=26 I.A. 41=26 C. 523. **W**
- (c) Under-proprietors are not tenants, and the Oudh Rent Act, of 1886, does not apply to them and they are not liable to pay interest on arrears of rent, under S. 141 of the Act. 26 C. 523 (P.C.). **X**

K.—INTEREST ON ARREARS OF RENT.—(Continued).**(6) Under-proprietors, who are.**

(a) Where the defendant obtained by consent of the talukdar a decree of the Financial Commissioner of Oudh, for a permanent hereditary farming lease, *held* that the defendant was an under-proprietor, as his interest is transferable under S. 6 of the Transfer of Property Act. So he is not liable to pay interest on arrears of rent. 3 O.C. 108. **Y**

(b) Under-proprietor is defined, by the Oudh Rent Act, as meaning any person possessing a heritable and transferable right of property in land, for which he is liable to payment. Where the defendants were found to be entitled to a heritable but non-transferable lease, they were held liable, under S. 141 of the Rent Act, to pay interest on arrears of rent due from them. 5 O.C. 187.; **Z**

(7) Interest on arrears of rent by way of damages.

Where the under-proprietors promised, by an ikrarnama, to pay the superior proprietor the Government revenue, plus 10 per cent., as rent, *held*, that the superior proprietors were entitled to interest, as damages on such rent, on proof of a breach of contract by the under-proprietors. 1 O.C. 270. **A**

(8) Under proprietors—Liability to pay interest on rent apart from S. 141, Oudh Rent Act, 1886.

Though under-proprietors are not liable to pay interest on arrears of rent under S. 141, Oudh Rent Act of 1886, yet they may be liable to pay interest apart from that Act. 8 C.W.N. 521 (P.C.). **B**

(9) Under-proprietors—Interest on arrears of rent—Act XXXII of 1839.

(a) As under-proprietors are not tenants, within the meaning of S. 141 of the Oudh Rent Act, a superior proprietor is not entitled to interest upon arrears of rent under that Act. However, such interest can be recovered under Act XXXII of 1839, if the conditions specified in the Act are satisfied. 1 O.C. 267. **C**

(b) Where, neither the deed of compromise nor the decree on it, by which the defendant's status as under-proprietors, prescribed a time for payment of the rent or contained any terms from which the terms could be ascertained, no interest would be allowed on the arrears of rent under Act XXXII of 1839. 8 C.W.N. 521 (P.C.) **D**

(10) Arrears of rent—Interest—Oudh Rent Act.

Where, under a *razinama*, rent was payable to the under-proprietor to the superior proprietor, such rent, under S. 12 of the Oudh Rent Act, must, in the absence of an agreement to the contrary, be paid one month before the date fixed for the payment of Government Revenue. If not so paid, he is liable to pay interest on such arrears, at the rate of 12 per cent., recognized by S. 141 of the Oudh Rent Act, to be a reasonable rate. 3 O.C. 22. **E**

(11) Payment of rent by one under-proprietor on behalf of other—Suit for such payment with interest.

Where all the under-proprietors in the village are jointly and severally responsible for the rent, and one of them is compelled to pay sums, which are payable by others, he is entitled not only to the sum paid, but also to interest upon those sums from the date of payment, under S. 73 of the Contract Act. 6 O.C. 346. **F**

K.—INTEREST ON ARREARS OF RENT.—(Continued).

(12) Under-proprietors—Interest on arrears of rent—S. 73 of the Contract Act.

Where the status of the defendants, as under-proprietors, was created by a compromise decree, no interest on arrears of rent could be recovered, under S. 73 of the Contract Act, as there was no breach of contract, the contract having merged in the decree. 8 C.W.N. 521 (P.C.) G

(13) Taking rent contrary to a decree—Interest.

Where a lessor, who has appealed against the decree of the lower Court in the matter of the rate of rent due from his lessees, receives rent at the rate alleged by him, agreeing to refund the amount paid in excess in case of his appeal being unsuccessful, he must pay interest on the excess rent if the result of the appeal is against him. 9 W.R. 272. H

(14) Interest on rent during the pendency of a suit for enhancement of rent.

While a suit for enhancement of rent was pending between the parties, the defendant is not liable for interest inasmuch as his rent was during the time undetermined; but interest, after the rent is determined, will be allowed on all arrears from that date and for all instalments due after that date. 10 W.R. 166. I

(15) Interest on rent—Suit for enhancement of rent.

Where a decree is given for arrears of rent at an enhanced rate, the plaintiff is entitled to interest not only from the date of the determination of the suit, but from the date when the rent fell due. 3 C.L.R. 382=4 C. 594. J

(16) Suit for arrears of rent—Determination of rent by a settlement officer.

In a suit brought to recover arrears of rent at the rate fixed by the Settlement Officer, for a period both prior and subsequent to the date of the Settlement Officer's order, the Court refused to grant a decree for the period antecedent to the officer's order, but allowed the claim for the period subsequent to the Settlement Officer's order, with interest thereon at 1 per cent. per mensem, from the date of the institution of the suit. 9 A. 185. K

(17) Suit for enhancement of rent—Admission by defendant—Interest.

Where, in a suit for arrears of rent at enhanced rate, the defendant admits that a certain sum is due for the year claimed, the Court will not be justified in dismissing the whole claim of the plaintiff, on his failure to adduce sufficient evidence in proof of his claim, but should decree the amount admitted by the defendant with interest thereon at 12 per cent. per annum. 24 W.R. 82. L

(18) Arrears of rent—Interest—Act X of 1859—Discretion of Court.

(a) The words, used in S. 20 of the Bengal Recovery of Rent Act (X of 1859), leave a discretion in the Court to grant interest or not on arrears of rent. 1 W.R. 152. M

(b) The provisions of Act VI of 1862 (Bengal Code) do not alter or affect the discretionary power of the Court to determine whether interest, under S. 20 of Act X of 1859 (Bengal Recovery of Rent) should be awarded or what costs should be given. 2 W.R. (Act X), 88. N

K.—INTEREST ON ARREARS OF RENT.—(Continued).

(19) Discretion of Court to grant interest on arrears of rent—Act VI of 1863.

The rule of law being that instalment of unpaid rent shall be liable to interest under S. 21 of the Rent Act (VI of 1863, Bengal Code) at 12 per cent., the discretion, which the Court has to disallow interest upon overdue arrears of rent, must be exercised upon very clear grounds. The fact that the landlord had on previous occasions excused the tenant from payment of interest, will not absolve the tenant from payment of interest on a subsequent default. 5 C. 102=4 C.L.R. 349. O.

(20) Interest on arrears of rent—Discretion of Court—Act VIII of 1869.

(a) The Judge has the discretion, under S. 21, Act VIII of 1869 (Bengal Act), to grant interest on arrears of rent at 12 per cent. and, so, he is not obliged to decree interest to that extent. 7 B.L.R. Ap. 26. P.

(b) The words of S. 21 of Act VIII (Bengal Code) of 1869, do not impose upon the tenant an absolute obligation to pay interest at 12 per cent., when the rent is not paid. As, under Act X of 1859 (Bengal Code), it is in the discretion of Court, whether or not interest should be awarded. 20 W.R. 128. Q.

(c) Where the term of the defendant's pattah provides that, in suits for arrears of rent, interest should be fixed according to custom and law, interest at the rate of 12 per cent. in accordance with the provision of Act VIII of 1869 (Bengal Code) will be allowed. 1 C.L.R. 147. R.

(d) The rate of interest, specified on arrears of rent by S. 21 of the Bengal Tenancy Act (VIII of 1869), is 12 per cent. per annum. But the Court is not bound to allow interest at that rate, but, has the discretion either to disallow interest altogether, or to grant interest at a lower rate. 26 W.R. 463. S.

(21) Unusual rate of interest on arrears of rent, whether allowable—Act VIII of 1869.

Whereas S. 21 of Bengal Act VIII of 1869 and S. 67 of Bengal Tenancy Act provides that 12 per cent. per annum shall be the ordinary rate of interest, 225 per cent. per annum, specified in a *kabuliyat* by a former tenant, will be an unusual rate of interest and will not attach to a tenancy, notwithstanding the sale of the holding for arrears of rent. 26 C. 315=3 C.W.N. 194. T.

(22) Tenant holding under a permanent *mokarari* lease—Contract to pay interest at a higher rate than 12 per cent. per annum on arrears of rent—Validity.

Having regard to the provisions of Ss. 178 and 179 of Act VIII of 1885 (Bengal Tenancy), a contract by a tenant, holding under a permanent *mokarari* lease, to pay interest on the arrears of rent at a higher rate than 12 per cent. per annum, provided by S. 69, is not enforceable in law. 26 C. 130=3 C.W.N. 37. U.

(23) Tenant holding over—Bengal Tenancy Act VIII of 1885.

A tenant bound himself by a *kabuliyat* to pay interest on the arrears of rent due from him at the rate of 75 per cent. per annum. This *kabuliyat* was executed before Act VIII of 1885 (Bengal Tenancy Act) came into force, but the period of the lease expired after the Act came into force. Held that the landlord was not entitled to recover from the tenant, holding over, after the expiry of the lease, without any fresh agreement, interest at a rate higher than 12 per cent. per annum. 2 C.W.N. 525. V.

K.—INTEREST ON ARREARS OF RENT.—(*Continued*).

- (24) **Bengal Tenancy Act (VIII of 1885), Ss. 67, 173 (31), cl. H.—Contract with tenants.**

Where a contract is made after the passing of the Bengal Tenancy Act, the parties will not, under S. 173 (c), cl. H, be allowed to contract themselves out of the provisions in S. 67, which limits the interest on arrears of rent at 12 per cent. per annum by the simple device of making the rent payable otherwise than quarterly, and interest at 12 per cent. only will be allowed. 33 C. 683=3 C.L.J. 391. **W**

- (25) **Permanent lease—Interest at a higher rate than 12 per cent.—Ss. 67 and 179 of Act VIII of 1885.**

In granting a permanent lease, within the terms of S. 179 of the Bengal Tenancy (Act VIII of 1885), a condition that interest shall be payable at a higher rate than 12 per cent. per annum, as allowed by S. 67 of that Act, is permissible. 5 C.W.N. 438 (F.B.)=29 C. 674. **X**

- (26) **Act VIII of 1885 (Bengal Tenancy)—Interest on arrears of rent.**

An agreement by a tenant of a holding for a term, to pay interest at a certain rate, may, if made before the passing of Act VIII of 1885 (Bengal Tenancy), bind him so long as he continues to hold, but it does not attach to the land, when the term has expired, and the holding, by the act of the landlord passes into other hands; and, if the landlord, after the expiry of the term, puts up the holding to sale under the Act, he puts it up subject to the express provisions of the Act in connection with it. 24 C. 37. **Y**

- (27) **Rent—Interest—Act VIII of 1885 (Bengal Tenancy).**

The word “rent” does not necessarily include interest. So a landlord is precluded from appropriating money paid by a tenant as rent, he receiving it as such, towards any interest which might be then due. 11 C.W.N. 110=5 C.L.J. 69. **Z**

- (28) **Non-existence of a convenient place of payment of rent—Arrears of rent—Interest.**

A tenant remains under the liability to pay his rent, notwithstanding that the landlord has no village office and that he has not appointed a convenient place for payment. Failure to pay the rent for the above reason, makes the rent, nevertheless, an arrear, and as such it should bear an interest at 12 per cent. per annum, under S. 67 of Act VIII of 1885 (Bengal Tenancy). 4 C.W.N. 324. **A**

- (29) **Deposit of rent—Interest—Bengal Tenancy Act, S. 61.**

Where the defendant tendered the *putni* rent to the plaintiff's am-muktear, and the plaintiff objected to receive it, *held* that such a tender was not a proper one, under S. 61 of the Bengal Tenancy Act, and the tenant was bound to pay interest, except in cases where the money was deposited in Court. 7 C.W.N. 720. **B**

- (30) **Suit for profits of a watan—Interest.**

In a suit to establish a right to share in a *watan* and to recover a portion of its profits for seven years, interest cannot be awarded on such profits. 4 Bom. H.C. (A.C.J.), 55. **C**

K.—INTEREST ON ARREARS OF RENT.—(Concluded).

- (31) **Interest—Santhal Pargunnahs Usury Laws (Reg. III of 1872 as amended by Reg. II of 1893, S. 24)—“Intermediate adjustment of accounts”—meaning.**

“Intermediate adjustment of accounts,” in S. 6 of Reg. III of 1872, as amended by S. 24 of Reg. II of 1893, should be interpreted with reference to the particular facts. Therefore, the compound interest, claimed in the case, was not barred by cl. (a) of the section. 1 C.L.J. 182. **D**

- (32) **Santhal Pargunnahs Usury Laws—Reg. III of 1872, S. 6 as amended by Reg. V of 1893—Interest.**

This section does not authorize any Court to decree as interest a larger sum of money than what would, together with prior payments, if any, equal the original loan or debt. The words “total interest decreed,” in cl. (b) of the section, mean the total amount of interest which the Court decrees, either explicitly, or if none has been paid, by implication, if it determines the amount outstanding by reference to previous payments or adjustments. 1 C.L.J. 182. **E**

- (33) **Defaulting *thekadar*—Interest on arrears of rent.**

The non-application of Cl. A of S. 34 of Act XII of 1881 (North-West Provinces Rent Act) to a *thekadar* does not exempt him from his liability under S. 73 of the Indian Contract Act. So a defaulting *thekadar* is liable to pay the arrears of rent with interest up to the date of payment. 18 A. 240. **F**

- (34) **Rate of interest on arrears of rent—S. 80 of the Tenancy Act.**

S. 80 of the Tenancy Act relates exclusively to cases in which there is no express agreement for the payment of interest on arrears. But there is nothing in the section which prevents a landlord recovering interest on arrears of rent at the rate stipulated for. 16 C.P.L.R. 48. **G**

- (35) **Interest—S. 38 of the Central Provinces Tenancy Act.**

Interest must, for the purpose of S. 38 (2) of the Tenancy Act, be calculated at the rate primarily chargeable and not at any increased rate provided for in case of breach, which may never become chargeable at all. 11 C.P.L.R. 17. **H**

- (36) **Interest on arrears of rent—Previous suit—Erroneous decision since overruled.**

A decision, on a former suit allowing interest on arrears of rent at 12 per cent. per annum, the *kabuliyat* providing for 24 per cent., which has since been overruled, will not be *res judicata* as regards a claim in a subsequent suit between the same parties, on arrears of rent on a different cause of action, and interest at the contract rate, will be allowed. 32 C. 749=9 C.W.N. 466. **I**

L.—INTEREST—MISCELLANEOUS.

- (1) **Payment on a bond first appropriated to interest.**

(a) It appears to be a well-settled practice of the Courts to appropriate payments made upon a bond first to the interest due thereon, and thereafter, if any balance remain, to the principal. A.W.N. (1905), 167=2 A.L.J. 585=28 A. 25. **J**

(b) Where payments are made upon a bond, the payment, if less than the interest due on the bond, will be applied to the interest, and a decree for the principal sum and the balance of interest up to the date of the decree will be awarded. 8 B.L.R. (P.C.), 110. **K**

(c) Payment to decree debt is first appropriated to interest. See 55 P.R. 1892. **L**

L.—INTEREST—MISCELLANEOUS.—(*Continued*).(2) **Contract to pay interest on principal and interest to accrue in future—Principal alone carries interest.**

Upon the adjustment of an account of the principal and interest due upon a bond, a *kararnamah*, or deed of agreement, was entered into by the parties, in which, besides the original sum, a further sum for interest accrued thereon was declared due, and was agreed to be paid by instalments before a given time. Payments were made at irregular periods, which payments the bond-holder claimed to appropriate to keeping down the interest upon the whole sum composed both of the original principal sum as well as the sum mentioned in the *kararnamah*, as accrued thereon for interest. *Held*, upon the construction of the document, that the principal sum alone carried interest, and that all payments made in pursuance of the stipulation were to be applied in the first instance to satisfy such interest, the excess of payment only being appropriated towards the liquidation of the principal sum due. 6 M.I.A. 289. **M**

(3) **Payment for decree—Mode of accounting.**

According to the rule usually adopted in this country as to the mode of making accounts, when a sum is realised on account of a decree, the amount is to be deducted for the interest and not from the principal. The balance of interest is never added to the principal so as to produce compound interest. 22 W.R. 525. **N**

(4) **Payment of principal sum—Suit for accrued interest.**

A suit against a Hindu debtor for interest actually and legally accrued is not barred, because the principal sum lent has been paid off. 8 Bom. L.R. 82=30 B. 452=1 M.L.T. 49. **O**

(5) **Agent's liability to pay interest on principal's money retained by him.**

An agent retaining money of the principal which he has not been required to pay will not ordinarily be liable to pay interest. But if the agent's conduct has been fraudulent, he ought to be charged with interest on all sums improperly retained by him. 23 W.R. 325. **P**

(6) **Surety's right to interest on money paid for principal.**

A surety is entitled as against the principal to interest on the sums paid on his account and for his benefit. 98 P.R. 1881. **Q**

(7) **Profits of business—Interest.**

(a) In the absence of accounts or other evidence to show the profits of business, in a suit where a share of money representing the capital of the business was decreed to the plaintiff, interest was awarded at 12 per cent. per annum. 14 W.R. 87. **R**

(b) The Privy Council allowed interest at 12 per cent. per annum, in lieu of profits which the defendant failed to account for, on the principal sum for which he was accountable. 10 M.I.A. 490 (P.G.) **S**

(8) **Non-payment of consideration money—Interest.**

Where the plaintiff is entitled to the consideration money and the defendant has not paid it, the Court will be justified to give interest, as it thought fit, in the shape of damages, for the period which had elapsed from the time when the consideration money became payable. 1 C.L.R. 236. **T**

(9) **Dower—Interest.**

Where the dower to which a Mahomedan widow is entitled is fixed at a sum very much higher than the entire estate belonging to the husband, she is not entitled to claim interest on the dower. 3 C.L.J. 541. **U**

L.—INTEREST—MISCELLANEOUS.—(*Continued*).**(10) Suit for recovery of title-deeds—Interest on amount due to defendant acknowledged in plaint.**

Where, in a suit for the recovery of title-deeds and other property, the plaintiff distinctly offers in his plaint to pay the defendant all that is due to the latter up to date, on condition of the property being given up, but the defendant denies the plaintiff's title and retains the deed and the property on the strength of an adverse title, the defendant is entitled to interest upon the amount due, only till the date of plaint, and not till the date of the payment of money. 4 C. 322=3 C.L.R. 375. **Y**

(11) Assignment of a debt or law-suit—Interest.

Where a debt or a law-suit is purchased, interest thereon ought not to be given for the entire period during which the purchaser thinks fit to allow the claim to remain outstanding; nor ought interest necessarily to be given upon the whole debt when the purchase money paid for it is very much below the actual amount of the principal. 11 W.R. 125. **W**

(12) Grain debt—Interest.

Where grain is lent, it is usual that it is done so when dear and re-paid when cheap after the expiration of one year with interest. But where grain was lent at 50 per cent. interest, and it was not to be repaid for 10 years, the Court did not give effect to the exact terms of the bond, but commuted it into money debt, and also allowed interest at 24 per cent., the rate agreed upon in respect of money borrowed with the grain. 4 C.P.L.R. 146. **X**

(13) Liability of customer to pay interest.

The mere fact of a customer signing order forms and receiving bills with the following head lines "Terms one month's credit; interest at 12 per cent., charged on expiry" will not be sufficient to charge interest on the customer. 55 P.R. 1901. **Y**

(14) Construction of registered bonds—Interest.

Where a debt due on a registered bond was admitted and the rate of interest was not exorbitant, the bond was strictly construed against the judgment-debtor, and the debtor was made to pay interest not only up to the due date but also up to the date of enforcement. 16 W.R. 297. **Z**

(15) Mortgage-decree—Leave to pay immediately to avoid high rate of interest.

In giving the plaintiff a decree on a mortgage which provided interest at 24 per cent., it was directed that the defendants in order to avoid the payment of further interest at that high rate, might be at liberty to pay the amount of the decree without waiting for the expiration of the usual six months. 7 C.L.R. 206. **A**

(16) Decree with costs and interest—Defendant was allowed a set-off—Calculation of interest.

The plaintiff obtained a decree with costs and interest upon those costs, the defendant being declared entitled to a certain sum for his costs in respect of that portion of the claim on which he succeeded. *Held*, that the set-off allowed to the defendant should be first deducted from the sum decreed before calculating interest on the amount due to the plaintiff. 13 W.R. 138. **B**

L.—INTEREST—MISCELLANEOUS.—(*Continued*).

- (17) **Insolvency proceedings—Power of the High Court to grant interest against the official assignee.**

Proceedings were taken under the Indian Insolvent Act, 11th & 12th Vic., Ch. 21, and the proceeds of certain goods, claimed by the Official Assignee, paid by the Assignee into the Bank of Bengal. In a suit brought in the High Court at Calcutta by A, against the Official Assignee, claiming the proceeds of the goods paid into the Insolvent Court, *held*, on the Court making a decree in favour of the plaintiff, that the High Court, being a Court of law and equity, had power to award interest on the amount as against the Official Assignee. 14 M.I.A. 209. **C**

- (18) **Pre-emption—Reduction of the price on appeal—Interest on reduced amount.**

A pre-emptor obtained a reduction in the price decreed by the lower Court on appeal. Meanwhile the original purchaser took the money from Court notwithstanding the objection of the pre-emptor that the amount was high and that he had appealed. *Held* that the pre-emptor was entitled to a refund of the reduced money with interest at 6 per cent. per annum. 111 P.R. 1892. **D**

- (19) **Policy of insurance—Interest after formal demand.**

A plaintiff is entitled to interest upon the amount of policy of insurance after the date of formal demand. 4 Bom. L.R. 205. **E**

- (20) **Insurance policies—Interest before demand.**

Interest upon the amount of a policy of insurance before formal demand is entirely within the discretion of the Court. 4 Bom. L.R. 205. **F**

- (21) **"Labham" includes interest.**

The word "labham" is a very general expression covering different kinds of profits or gain, and it includes also profits by way of interest. 29 M. 155. **G**

- (22) **Court's power to add interest to the award of arbitrators.**

Where the arbitrators have not awarded interest, the Court cannot go beyond the award of the arbitrators and grant decree for interest also. 28 W.R. 105. **H**

- (23) **Profits of specific legacy and interest on general legacy.**

S. 12 of the Probate and Administration Act provides that the legatee is entitled to the produce of a specific legacy, and Ss. 130 and 131 entitle legatees to interest on general legacies. 29 M. 155. **I**

- (24) **Interest on demonstrative legacies—English and Indian Law.**

(a) According to English law, demonstrative legacies carry interest from one year after the testator's death. The Indian Law is not different though there is no distinct provision for interest on such legacies in the Indian Probate and Administration Act. (*Ibid.*) **J**

(b) Demonstrative legacies, just as general legacies should carry interest at 6 per cent. per annum from the expiry of one year from the death of the testator, such interest being payable out of the income or profits from which the principal amount of the legacies has been made payable. 29 M. 155. **K**

- (25) **Legacy bequeathed in satisfaction of debt—Interest—Probate and Administration Act.**

Under S. 132 of the Probate and Administration Act, the rate of interest payable on a legacy is 6 per cent., and if the legacy is bequeathed in satisfaction of a debt the legacy should bear interest from the death of the testator under exception I to S. 130 of the Act. 25 M. 361=12 M.L.J. 183. **L**

L.—INTEREST—MISCELLANEOUS.—(*Continued*).

(26) What is a sufficient payment of interest under S. 20 of the Indian Limitation Act.

- (a) An entry in a creditor's book of a balance due for principal and interest, or even a verbal assent to such balance cannot be treated as a payment of interest as such for the purposes of S. 20 of the Limitation Act. A.W.N. (1906), 212. **M**
- (b) Where the payee of a pro-note was given possession of a certain bond, so that he may enjoy the produce of the land in lieu of interest, *held*, that the payee's enjoyment of the land in lieu of interest was payment to him of interest, under the pro-note, sufficient to satisfy the requirements of S. 20 of the Indian Limitation Act. 29 M. 234=16 M.L.J. 299. **N**
- (c) Where the interest was not paid in cash, but, on a settlement of accounts, the amount of interest calculated up to date was added to the principal, and the aggregate amount was treated as principal, *held*, that there had been a payment of interest, as such sufficient to satisfy the requirements of S. 20 of the Limitation Act. 9 O.C. 221. **O**
- (d) Where there are two debts due from a debtor, any payment made by him for interest, without stipulating to which of the debts it should be applied, cannot be appropriated to a particular debt, so that it may be regarded as payment of interest for the purposes of S. 20 of the Limitation Act. 15 C.P.L.R. 29. **P**

(27) Interest paid by a certified guardian of minor—S. 20, Limitation Act.

A certificated guardian of a minor is really an agent authorised to pay interest on the debt, so as to start a new period of limitation under S. 20 of the Indian Limitation Act. 6 C.W.N. 729. **Q**

(28) Payment of interest—S. 21, Limitation Act, 1871.

Any payment on account of interest on a debt, whether wholly or partially, will take the case out of the bar of limitation when the Court is satisfied that the payment amounts to an unqualified admission of liability as subsisting. S.C. (Oudh) 1. **R**

(29) Bond—Payment of interest by produce of certain land—Art. 21 of Act IX of 1871.

Where half the produce of a certain land was stipulated to be paid as interest on a certain bond, *held* that the receipt of the produce of land was equivalent to the receipt of interest, under S. 21 of Act IX of 1871. 6 P.R. 1874. **S**

(30) Interest payable yearly—Default—Whether continuing breach.

An obligation to pay interest annually is of "a recurring kind" and failure to discharge the obligation does not amount to a continuing breach of contract within the meaning of this section. 28 P.R. 1897. **T**

(31) Injunction to deposit amount due on a bond—Failure to do so—Subsequent suit—Interest.

The defendant was directed by an injunction issued upon him in another suit to deposit the money admittedly due under the bonds now sued upon into the Court. The defendant having refused to do so was liable to pay interest from the date of the injunction. 16 W.R. 297. **U**

L.—INTEREST—MISCELLANEOUS.—(*Concluded*).(32) **Suit for interest only—Subsequent suit for principal and further interest—S. 43, Civil Procedure Code.**

A bond was construed to have created only one obligation, *vis.*, to pay the principal with interest at 25 per cent., payable yearly, and in default of yearly payment, with further interest on the same rate on the yearly interest. *Held*, that the plaintiff having sued for interest only which was not paid for two years, could not in a subsequent suit claim the principal with subsequent interest. S. 43 of the Civ. Pro. Code of 1882 acted as a bar to such splitting of the cause of action. 70 P.R. 1889. Y

(33) **Execution of decree—Compromise—Interest in addition to the amount decreed—S. 257, Civ. Pro. Code.**

Where a decree-holder informed the Court executing the decree that part of the decree-amount had been realized and that the parties had agreed that the balance should be paid in two instalments with interest which was to be enhanced on default of due payment of the instalments, *held*, that, as the Court executing the decree had not considered the propriety of the compromise under S. 257A of the Civ. Pro. Code, the order of that Court to strike off the decree could not be considered to be one sanctioning the agreement for the re-payment of the money in excess of the sum decreed. 1 O.C. 71. W

(34) **Part of the purchase money left unpaid as security for vendor satisfying incumbrance—Interest whether payable.**

Where, by an agreement between the vendor and the vendee, a part of the purchase-money was left with the vendee not as a deposit of the money of the vendor, but as a security that the property sold should be freed from incumbrances and that the vendee should have a good title, *held*, that the vendee would not be liable to pay interest unless he refused or omitted to pay the money when he was informed that the vendor was prepared to pay the balance to satisfy the incumbrancer. 21 A. 223 (P.C.). X

(35) **Interest—Act XXIII of 1861.**

In a suit to recover a sum of rupees due upon an agreement for which interest for 15 days only was payable at the rate of one rupee per diem, *held*, that, as no rate was agreed upon between the parties after the expiration of 15 days, the Court had the power to fix a reasonable rate of interest subsequent to that time under S. 10, Act XXIII of 1861. 14 W.R. 450. Y

(36) **S. 52, Act XVI of 1864—Bond enforced as decree—Interest.**

Where a bond is, under S. 52, Act XVI of 1864, to be enforced as a decree in a suit, and contains no provision for interest after the date on which the debt is payable, the rule that no interest is allowable, where the decree is silent as to interest, must be applied to such a bond. 10 W.R. 175. Z

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* At pp. 47 and 54 this is wrongly printed as 8 C. 262.

† Read this as '17 A. 581.'

† At pp. 34 and 35 this is wrongly printed as 17 A. 571.

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